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RULES OF COURT

OF THE

COURTS IN THE PROVINCE OF

SASKATCHEWAN

WITH ANNOTATIONS

BY

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CONTENTS.

Rules of Supreme Court .....to follow page 162
Rules of Crown Practice under the Winding-up Act .....to follow page 189
Rules of the Surrogate Court .....to follow page 293
Rules of the District Court .....to follow page 303

THE CONSOLIDATED

ORDERS AND RULES

OF THE

SUPREME COURT OF SASKATCHEWAN

INCLUDING RULES FOR

CROWN PRACTICE, STATED CASES UNDER THE CRIMINAL CODE, CONVEYANCE OF PRISONERS TO GAOL AND WINDING UP COMPANIES PROCEEDINGS

ALSO

RULES OF PRACTICE AND PROCEDURE OF THE SURROGATE COURTS AND THE DISTRICT COURTS, WITH FORMS AND TARIFFS OF COSTS

(As revised and consolidated by the Council of Judges under authority of The Judicature Act, and approved by Order of The Lieutenant Governor in Council.)

PROMULGATED NOVEMBER 11, 1911

TO COME INTO FORCE JANUARY 1, 1912, ON WHICH DATE ALL PREVIOUS RULES OF COURT ARE RESCINDED

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E. L. WETMORE, C. J.,
H. W. NEWLANDS, J.,
T. C. JOHNSTONE, J.,
J. H. LAMONT, J.,
J. T. BROWN, J.

TABLE OF CONTENTS

THE CONSOLIDATED ORDERS AND RULES

OF

THE SUPREME COURT

GENERAL PRACTICE AND PROCEDURE.

Order		Rules	Page
I.	Form and Commitment of Action	1 to 6	1
II.	Writ of Summons	6 to 15	2
	(1) Generally	7	2
	(2) Concurrent Writ	8	2
	(3) Renewal	9, 10	2
	(4) Lost Writ	11	3
	(5) Indorsement by Solicitor	12, 13	3
	(6) Change of Solicitor	14, 15	4
III.	Service of Writ of Summons	16 to 22	4
	(1) Generally	16 – 18	4
	(2) Substitutional service	19 – 21	6
	(3) Indorsement of service unnecessary	22	6
IV.	Service out of Jurisdiction	23 to 27	6
V.	Service of other proceedings	28 to 30	8
VI.	Parties	31	9
	(1) Generally	31 – 43	9
	(2) Persons under disabilities	44 – 49	9
	(3) Copartners	50 – 57	12
	(4) Administration and execution of Trusts	58 – 72	14
	(5) Constitutional questions	73 – 92	17
	(6) Third Party procedure	74 – 82	17
	(7) Change of parties	83 – 92	20
VII.	Joinder of Cause of Action	93 to 101	22
VIII.	Appearance	102 to 118	23
IX.	Default of Appearance	119 to 134	26
X.	Striking out Appearance	135 to 143	29
XI.	Pleadings generally	144 to 169	31
XII.	Statement of Claim	170 to 172	35
XIII.	Defence and Counterclaim	173 to 191	36

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Order		Rules	Page
XIV.	Reply and Close of Pleadings	192 to 195	39
XV.	Payment into and out of Court and Tender	196 to 214	39
XVI.	Matters arising pending action	215 to 217	44
XVII.	Raising points of Law, etc	218 to 223	45
XVIII.	Default of Pleading	224 to 235	46
XIX.	Notice and Entry of Trial	236 to 248	48
XX.	Discontinuance	249 to 252	50
XXI.	Amendment	253 to 265	51
XXII.	Discovery of Documents, etc	266 to 277	53
XXIII.	Examination for Discovery	278 to 305	56
XXIV.	Admissions	306 to 314	62
XXV.	Issues, Inquiries and Accounts	315 to 341	64
	(1) Generally	315 – 334	64
	(2) Inquiry and Reference as to Damages	335, 336	67
	(3) Summary inquiries into fraudulent transfers	337 – 341	67
XXVI.	Special case	342 to 348	68
XXVII.	Trial	349 to 359	70
XXVIII.	Evidence	360 to 400	72
	(1) Generally	360 – 364	72
	(2) Examination of witnesses	365 – 387	73
	(3) Subpoena	388 – 397	76
	(4) Perpetuating testimony	398 – 400	78
XXIX.	Obtaining evidence for foreign tribunals	401 to 407	78
XXX.	Affidavits and Depositions	408 to 433	80
XXXI.	Motion for Judgment	434 to 443	83
XXXII.	Judgment and Entry of Judgment	444 to 453	85
XXXIII.	Execution	454 to 500	87
	(1) Generally	454 – 494	87
	(2) Poundage, interest, etc	495 – 500	95
XXXIV.	Discovery in Aid of Executions	501 to 504	95
XXXV.	Attachment of Debts	505 to 519	98
XXXVI.	Interlocutory orders as to mandamus, injunctions, or interim preservation of property	520 to 536	102
	(1) Mandamus	532 to 536	104
XXXVII.	Receivers	537 to 544	105
XXXVIII.	Attachment of personal property	545 to 553	106
XXXIX.	Replevin	553 to 558	109
XL.	Interpleader	559 to 577	111

Order		Rules	Page
XLI.	Sale of land, partition, etc	578 to 588	115
XLII.	Motions and Applications	589 to 599	117
XLIII.	Applications in Chambers	600 to 644	119
	(1) By Originating Summons	600 – 607	119
	(2) Generally, Powers of Local Masters in Chambers	608 – 619	121
	(3) Administration and Trusts	624 – 642	124
	(4) Guardians ad litem	643	128
	(5) Varying orders	644	128
XLIV.	Courts en banc	645 to 690	128
	Factums	676 – 690	135
XLV.	Sittings and vacations	691 to 699	137
XLVI.	Time	700 to 708	138
XLVII.	Costs	709 to 737	140
	(1) Generally	709 – 713	140
	(2) Security for Costs	714 – 716	141
	(3) Taxation and Tariffs	717 – 736	142
	(4) Special Allowances and General Regulations	737	145
XLVIII.	Service of Orders, etc	738 to 746	150
XLIX.	Noncompliance and Irregularities	747 to 750	152
L.	Miscellaneous	751, 752	152
	(1) Forms	751	152
	(2) Actions against Public Officers	752	152
LI.	Lunatics	753 to 765	153
LII.	Infants	766 to 792	155
	(1) Guardians	766 – 775	155
	(2) Custody of Infants	776 – 779	158
	(3) Estate and property of infants	780 – 792	159
LIII.	Interpretation of Terms	793, 794	161
LIV.	General Rules	795 to 797	162

CROWN PRACTICE RULES.

No.		Page
1.	Custody of Papers	163
2- 7.	Certiorari	163
8-13.	Quo Warranto	164
14-25.	Mandamus	165
26-27.	Pleadings in Quo Warranto	167
28.	Pleadings in Mandamus	167
29.	Pleadings in Prohibition	167
30.	Judgment by Default	167
31-35.	Habeas Corpus	168
36-43.	General	168
44-46.	Application of Supreme Court Rules	169
47-48.	Forms	171

RULES FOR CASES STATED UNDER SECTION 761, CRIMINAL CODE.

No.		Page
1 to 14		172

RULES FOR CONVEYANCE OF PRISONERS UNDER SENTENCE TO GAOLS.

1 to 3		175

THE WINDING UP ACT RULES AND ORDERS.

1.	Interpretation	176
2-9.	Petition to Wind up Company	176
10-20.	Liquidators	177
21-22.	Proceedings under Winding up Order	179
23-33.	Proof of debts	180
34-35.	Lists of contributories	182
36-45.	Calls	182
46-48.	Proceedings before a Judge	184
50.	Advertisements	185
51.	Admission of Documents	186
52-54.	File of Proceedings	186
55.	Provisional Liquidator	187
56-58.	Attendance and Appearance of Parties	187
59-60.	Service of Summons, Notices, etc	188
61.	Forms	188
62-63.	Costs	188
64.	Computation of Time	189
65.	General Directions	189

SURROGATE COURTS PROCEDURE AND PRACTICE.

1-29.	General	257
30-41.	Surrogate Courts	261
42-45.	Appeals	263
46-47.	Removal of Causes	264
48-49.	Surrogate Registrar	264
50-53.	Fees	264
54-55.	Forms	266
56-65.	Contentious Business	267

DISTRICT COURT RULES.

1-3.	General	295
4-24.	Small Debt Procedure	295

TARIFF OF COSTS.

Schedule 1.	Solicitor's Fees	305
Schedule 2.	Registrar's and Sheriff's Fees	313
Schedule 3.	Court Reporters, Witnesses, Jurors and Interpreters	318
Schedule 4.	Justices, Solicitors, Registrars and Clerk, under Section 761 of The Criminal Code	319

RULES OF COURT

[*The division of these Rules into Orders and Headings is not to affect the interpretation thereof.*]

PART 1.

General Practice and Procedure.

ORDER I.

FORM AND COMMENCEMENT OF ACTION.

Commencement of action

1. Every action, except as otherwise provided, shall be commenced by writ of summons in form 1 in the appendix hereto, which writ shall be issued by the local registrar for the district in which the action is intended to be brought, upon receiving from the plaintiff or his solicitor a præcipe therefor, in which shall be set forth:

Præcipe

(*a*) The names of the parties to the action; and

(*b*) Their places of residence, temporary or otherwise; and

(*c*) The residence of the plaintiff's solicitor, if such writ be issued by a solicitor. C. O. 21, R. 1.

Statement of claim

2. At the time of the issue of the writ, the plaintiff or his solicitor shall leave with the local registrar two copies of the plaintiff's statement of claim and of the relief or remedy to which he claims to be entitled; one of such copies shall be attached to such writ by the local registrar, and the other shall be filed by him in his office, and a copy of such statement of claim shall be attached to each copy of such writ required for service. C. O. 21, R. 2.

Writ for service out of jurisdiction

3. No writ of summons for service out of the jurisdiction shall be issued without leave of the court or a judge. [E. 6.]

Writ of summons to be prepared by plaintiff

4. Writs of summons shall be prepared by the plaintiff or his solicitor, and shall be written or printed, or partly written and partly printed. [E. 32.]

Issue of writ

5. Every writ of summons shall be signed and sealed by the proper officer, and shall thereupon be deemed to be issued. [E. 33.]

Entry in procedure book

6. The officer receiving the præcipe and statement of claim shall file the same, and an entry of the filing thereof shall be made in a book to be called the Procedure Book, which is to be kept in the manner in which Procedure Books are now kept, and the action shall be distinguished by the date of the year, a letter, and a number, in the manner in which causes are now distinguished in such Procedure Books. [E. 35.]

ORDER II.

WRIT OF SUMMONS.

I.—*Generally.*

Writs to be dated

7. Every writ of summons, and also (unless otherwise provided) every other writ shall bear the date of the day on which the same is issued. [E. 10.]

Time for return of writ

(2) In every writ of summons issued for service within the province, the time stated for appearance shall be within twenty days from the service upon the defendant:

May be shortened

Provided that the judge may by order shorten the time for appearance to such writ. C. O. 21, R. 3.

II.—*Concurrent Writ.*

Writ concurrent to original

8. The plaintiff in any action may, at the time of or at any time during twelve months after the issuing of the original writ of summons, issue one or more concurrent writ or writs, each concurrent writ to bear teste of the same day as the original writ, and be marked with the word "concurrent" in the margin, and the date of issuing the concurrent writ:

Provided always, that such concurrent writ or writs shall only be in force for the period during which the original writ in such action shall be in force. [E. 40.] C. O. 21, R. 5.

Concurrent writ for service ex juris

(2) A writ for service within the jurisdiction may be issued. and marked as a concurrent writ with one for service out of the jurisdiction; and a writ for service out of the jurisdiction may be issued, and marked as a concurrent writ with one for service within the jurisdiction. [E. 41.]

III.—*Renewal.*

Duration of writ

9. No original writ of summons shall be in force for more than twelve months from the day of the date thereof, including the day of such date; but, if any defendant therein named shall not have been served therewith, the plaintiff may, before

Application for renewal

the expiration of the twelve months, apply to the court or a judge for leave to renew the writ; and the court or a judge, if

satisfied that reasonable efforts have been made to serve such defendant, or for other good reason, may order that the original or concurrent writ of summons (or both) be renewed for six months from the date of such renewal inclusive, and so from time to time during the currency of the renewed writ. And the writ shall in such case be renewed by being marked with the day, month and year of such renewal and shall be so marked by the proper officer upon delivery to him by the plaintiff or his solicitor of the order and presenting to him the said writ; and a writ of summons so renewed shall remain in force and be available to prevent the operation of any statute whereby the time for the commencement of the action may be limited, and for all other purposes, from the date of the issuing of the original writ of summons. [E. 45.] C. O. 21, R. 6.

Evidence of renewal and commencement of action

10. The production of a writ of summons purporting to have been renewed in manner aforesaid, shall be sufficient evidence of the writ having been so renewed, and of the commencement of the action as of the first date of such renewed writ for all purposes. [E. 46.] C. O. 21, R. 7.

IV.—*Lost Writ.*

Copy may be sealed

11. Where a writ of which the production is necessary, has been lost, the court or a judge, upon being satisfied of the loss, and of the correctness of a copy thereof, may order that such copy shall be sealed and used in lieu of the original writ. [E. 47.] C. O. 21, R. 8.

V.—*Indorsement by Solicitor.*

Indorsement on writ by advocate

12. The solicitor of a plaintiff suing by a solicitor shall indorse upon the writ the address of the plaintiff, and also his own name or firm and place of business, and also, if his place of business shall be more than three miles from the office whence the writ issues, another proper place, within such three miles to be called his "address for service," where pleadings, notices, summonses, orders and other documents, proceedings and written communications in the suit may be left for him; and when a plaintiff sues in person he shall indorse on the writ his occupation and place of residence and if his residence be more than three miles from the office aforesaid another proper place within such three miles to be called his "address for service," where pleadings, notices, summonses, orders and other documents, proceedings and written communications in the suit may be left for him. In case of the omission to supply an address for service as aforesaid, all papers requiring service may be filed in the local registrar's office, and in such case be deemed good service. [E. 19.] C. O. 21, R. 9.

Plaintiff suing in person

Address for service

Omission to supply

Disclosure by solicitor whose name is indorsed

13. Every solicitor whose name shall be indorsed on any writ of summons shall, on demand in writing made by, or on behalf of, any defendant who has been served therewith or has appeared thereto, declare forthwith in writing whether such writ has been issued by him, or with his authority or privity; and if such solicitor shall declare that the writ was not issued by him, or with his authority or privity, all proceedings upon the same shall be stayed, and no further proceedings shall be taken thereupon without leave of the court or a judge. [E. 42.] C. O. 21, R. 10.

(2) In all cases where proceedings are commenced, otherwise than by writ of summons, the preceding rules of this order shall apply to the document by which such proceedings shall be originated, as if it were a writ of summons. [E. 22.]

VI.—*Change of Solicitor.*

Notice of change of solicitor

14. A party suing or defending by a solicitor may change his solicitor in any cause or matter without an order for that purpose, upon notice of such change being filed in the local registrar's office in which the cause or matter is proceeding; but until such notice is filed, and a copy thereof served, the former solicitor shall be considered the solicitor of the party until the final conclusion of the cause or matter. [E. 44.] C. O. 21, R. 11.

Employment of solicitor after proceeding in person

15. Where a party, after having sued or appeared in person, has given notice in writing to the opposite party or his solicitor through a solicitor, that such solicitor is authorised to act in the cause or matter on his behalf all writs, notices, pleadings, summonses, orders, warrants and other documents, proceedings and written communications which ought to be delivered to, or served upon, the party on whose behalf the notice is given, shall thereafter be delivered to or served upon such solicitor. C. O. 21, R. 12.

ORDER III.

SERVICE OF WRIT OF SUMMONS.

I.—*Generally.*

Undertaking to accept service

16. No service of writ shall be required when the defendant, by his solicitor, undertakes in writing to accept service and enters an appearance. [E. 48.]

Service by whom Fees

17. Service of a writ of summons may be made by the sheriff, his deputy or bailiff, or by any literate person other than a plaintiff, but except by order of the court or a judge no fees for service shall in such latter case be allowed. C. O. 21, R. 13.

18. Service of writ of summons shall be effected by serving a copy as follows: Manner of service

1. By personal service anywhere in Saskatchewan; Personal

2. In case any defendant is out of Saskatchewan but has an agent, managing clerk or other representative resident and carrying on his business within the same service of the writ of summons may be made on such agent, managing clerk or other representative; On representative of absent defendant

3. Every writ of summons issued against a corporation and all other proceedings in an action against a corporation may be served on the president or other head officer or on the cashier, manager, treasurer, secretary, clerk, agent or other representative by whatsoever name or title he be known of such corporation or of any branch or agency thereof in Saskatchewan; and every person who within Saskatchewan transacts or carries on any business of or for any corporation whose chief place of business is without Saskatchewan shall for the purpose of being served with a writ of summons or any other proceedings as aforesaid in an action against or at the suit of such corporation be deemed the agent thereof; C. O. 14, s.s. 3. Corporation

4. Service of a writ of summons in an action to recover land may in case of vacant possession, when it cannot otherwise be effected, by leave of a judge be made by posting a copy of the writ and statement of claim upon the door of the dwelling house, or other conspicuous part of the premises; [E. 56.] Recovery of land. Vacant possession

5. When husband and wife are both defendants to the action they shall both be served, unless the court or a judge shall otherwise order; [E. 50.] Husband and wife

6. When an infant is a defendant to the action, service on his father or guardian, or if none, then upon the person with whom the infant resides or under whose care he is, shall, unless the court or a judge otherwise orders, be deemed good service on the infant:

Provided that the court or a judge may order that service made or to be made on the infant shall be deemed good service; [E. 51.] Infant defendant

7. When a lunatic or person of unsound mind not so found by inquisition is a defendant to the action, service on the guardian of the lunatic or on the person with whom the person of unsound mind resides, or under whose care he is, shall, unless the court or a judge otherwise orders, be deemed good service on such defendant. [E. 52.] C. O. 21, R. 14. Lunatic

II.—*Substitutional Service.*

Substitutional service

19. In any case, if it be made to appear to the court or a judge that the plaintiff is from any cause unable to effect prompt personal service, the court or a judge may make such order for substituted or other service or for the substitution for service of notice, by advertisement or otherwise, as may be just. [E. 49.] C. O. 21, R. 15.

Substituted service

20. Every application to the court or a judge for an order for substituted or other service or for the substitution of notice for service, shall be supported by an affidavit setting forth the grounds upon which the application is made. [E. 63.]

Original writ served instead of copy

21. In any case, if it be made to appear to the court or a judge that the original writ has been served upon the defendant, instead of a copy, the court or a judge may order that such service be good service, and may in such order dispense with the production of such original. C. O. 21, R. 16.

III.—*Indorsement of Service Unnecessary.*

Indorsement of service unnecessary

22. It shall not be necessary for the person serving a writ of summons to indorse on the writ the day of the week and month of such service; but, the writ and statement of claim shall each be marked, as an exhibit to the affidavit of service, by the person administering the oath. C. O. 21, R. 17.

ORDER IV.

SERVICE OUT OF THE JURISDICTION.

Service out of jurisdiction, when allowed

23. Service of a writ of summons on a defendant, out of the jurisdiction, may be allowed by the court or a judge whenever:

1. The whole subject matter of the action is land situate within the jurisdiction (with or without rents or profits); or

2. Any act, deed, will, contract, obligation or liability affecting land or hereditaments situate within the jurisdiction is sought to be construed, rectified, set aside, or enforced in the action; or

3. Any relief is sought against any person domiciled or ordinarily resident within the jurisdiction; or

4. The action is for the administration of the estate of any deceased person who at the time of his death was domiciled within the jurisdiction or for the execution (as to property

situate within the jurisdiction) of the trusts of any written instrument of which the person to be served is a trustee which ought to be executed according to the law of Saskatchewan; or

5. The action is for the recovery of any debt contracted within the jurisdiction or is founded on any breach or alleged breach within the jurisdiction of any contract wherever made, which, according to the terms thereof, ought to be performed within such jurisdiction or is founded on a tort committed within the jurisdiction; or

6. An injunction is sought as to anything to be done within the jurisdiction, or any nuisance within the jurisdiction is sought to be prevented or removed, whether damages are or are not also sought in respect thereof; or

7. Any person out of the jurisdiction is a necessary or proper party to an action properly brought against some other person duly served within the jurisdiction; [E. 64] or

8. The action is upon a foreign judgment and it is proved to the satisfaction of the court or a judge that the defendant has assets within the jurisdiction; or

9. The action is for any other matter and it appears to the satisfaction of the court or a judge that the plaintiff has good cause of action against the defendant upon a contract or judgment and that the defendant has assets in the jurisdiction of the value of $200 at least which may be rendered liable for the satisfaction of the judgment in case the plaintiff should recover judgment in the action; but in such case if the defendant does not appear the court or a judge shall give directions from time to time as to the manner and conditions of proceeding in the action and shall require the plaintiff before obtaining judgment to prove his claim before a judge or jury or in such manner as may seem proper. C. O. 21, R. 18 amend. by c. 10 of 1901, s. 2.

Application for leave

24. Every application for leave to serve such writ of summons on a defendant out of the jurisdiction shall be before writ issued except as hereinbefore provided for and be supported by affidavit or other evidence stating that in the belief of the deponent the plaintiff has a good cause of action and showing in what place or country such defendant is or probably may be found, and the grounds upon which the application is made; but no such leave shall be granted unless it shall be made sufficiently to appear to the court or judge that the case is a proper one for service out of the jurisdiction under this order. [E. 67.] C. O. 21, R. 19.

Time for appearance

25. Any order giving leave to effect such service shall limit a time after such service within which such defendant is to

enter an appearance, such time to depend on the place or country where or within which the writ is to be served. [E. 68.] C. O. 21, R. 20.

Substitutional service

26. In any such case if it be made to appear to the court or a judge that service as ordered out of the jurisdiction cannot be made and that reasonable efforts (showing them) have been made to effect such service, the court or judge may make an order for substitutional service by advertisement or otherwise as may seem proper. C. O. 21, R. 21.

Substitutional service where defendant's whereabouts unknown

27. In any case if it be made to appear to the court or a judge that the whereabouts of the defendant is unknown, after all reasonable efforts have been exhausted to ascertain them, the court or judge may in any action in which they or he deems it proper, make such order for service of the writ or of a notice thereof by advertisement, or otherwise, as the court or judge may deem proper subject to such terms and conditions as may be necessary to protect the defendant from injustice; but judgment shall not be entered on default of appearance in any such case or in the cases mentioned in rules 19 and 26 until the court or a judge is satisfied by such proof as the court or judge may require of the justice of the claim. C. O. 21, R. 22.

Judgment by default

Proof of claim

ORDER V.

SERVICE OF OTHER PROCEEDINGS.

Service of notices, pleadings, etc.

28. Where personal service of any notice, pleading, order, summons, warrant or other document, proceeding or written communication is required the service shall be effected as nearly as may be in the manner prescribed for the personal service of a writ of summons. C. O. 21, R. 23.

Substitutional service of notices, etc.

29. Where personal service of any notice, pleading, summons, order, warrant or other document, proceeding or written communication is required, and it is made to appear to the court or a judge that prompt personal service cannot be effected, the court or judge may make such order for substituted or other service or for the substitution for service of notice by letter, public advertisement or otherwise as may be just. C. O. 21, R. 24.

Admissions of service on solicitors

30. Admissions and acceptances of service of papers and documents purporting to be signed by, or on behalf of, a solicitor need not be verified by affidavit, but shall be accepted as *prima facie* proof. C. O. 21, R. 25.

ORDER VI.

PARTIES.

I.—*Generally.*

Plaintiffs claiming jointly, severally or in the alternative

31. All persons may be joined in one action as plaintiffs, in whom the right to any relief in respect of, or arising out of, the same transaction or series of transactions is alleged to exist, whether jointly, severally, or in the alternative, where if such persons brought separate actions any common question of law or fact would arise:

Provided that, if upon the application of any defendant it shall appear that such joinder may embarrass or delay the trial of the action, the court or a judge may order separate trials, or make such other order as may be expedient. And judgment may be given for such one or more of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to, without any amendment. But the defendant, though unsuccessful, shall be entitled to his costs occasioned by so joining any person who shall not be found entitled to relief, unless the court or a judge in disposing of the costs shall otherwise direct. [E. 123.] C. O. 21, R. 26.

Wrong person named as plaintiff

32. Where an action has been commenced in the name of the wrong person as plaintiff, or where it is doubtful whether it has been commenced in the name of the right plaintiff, the court or a judge may, if satisfied that it has been so commenced, through a *bona fide* mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff, upon such terms as may be just. [E. 124.] C. O. 21, R. 27.

Misjoinder of plaintiff

Counterclaim

33. Where, in any action any person has been improperly or unnecessarily joined as a coplaintiff, and a defendant has set up a counterclaim or set-off, he may obtain the benefit thereof by establishing his set-off or counterclaim as against the parties, other than the coplaintiff so joined, notwithstanding the misjoinder of such plaintiff or any proceeding consequent thereon. [E. 125.] C. O. 21, R. 28.

Joinder of defendants

34. All persons may be joined as defendants, against whom the right to any relief is alleged to exist, whether jointly, severally or in the alternative. And judgment may be given against such one or more of the defendants as may be found to be liable, according to their respective liabilities, without any amendment. [E. 126.] C. O. 21, R. 29.

Defendant need not be interested in all relief claimed

35. It shall not be necessary for every defendant to be interested as to all the relief prayed for, or as to every cause of action included in any proceeding against him; but the

court or a judge may make such order as may appear just, to prevent any defendant from being embarrassed or put to expense, by being required to attend any proceedings in which he may have no interest. [E. 127.] C. O. 21, R. 30.

Joinder of persons severally liable

36. The plaintiff may, at his option, join as parties to the same action all or any of the persons severally, or jointly and severally, liable on any one contract, including parties to bills of exchange and promissory notes. [E. 128.] C. O. 21, R. 31.

Plaintiff in doubt as to person liable

37. Where the plaintiff is in doubt as to the person from whom he is entitled to redress, he may by leave of the court or a judge, on *ex parte* application, join two or more defendants to the intent that the question as to which, if any, of the defendants is liable and to what extent, may be determined as between all parties. [E. 129.] C. O. 21, R. 32.

Trustees, etc., may sue and be sued as representatives

38. Trustees, executors and administrators may sue and be sued on behalf of, or as representing the property or estate, of which they are trustees or representatives, without joining any of the persons beneficially interested in the trust or estate, and shall be considered as representing such persons; but the court or a judge may, at any stage of the proceedings, order any of such persons to be made parties either in addition to, or in lieu of, the previously existing parties.

(2) If the plaintiff sues, or the defendant is sued in a representative capacity, the statement of claim shall show in what capacity the plaintiff or defendant sues or is sued, as the case may be. This rule shall apply to trustees, executors, and administrators sued in proceedings to enforce a security by foreclosure or otherwise. [E. 130.] C. O. 21, R. 33.

Suit or defence by one person for class

39. Where there are numerous persons having the same interest in one cause or matter, one or more of such persons may sue or be sued, or may be authorised by the court or a judge to defend in such cause or matter, on behalf or for the benefit of all persons so interested. [E. 131.] C. O. 21, R. 34.

40. Where in proceedings concerning a trust a compromise is proposed, and some of the persons interested in the compromise are not parties to the proceedings, but there are other persons in the same interest before the court, and assenting to the compromise, the court or a judge, if satisfied that the compromise will be for the benefit of the absent persons, and that to require service upon such persons would cause unreasonable expense or delay, may approve the compromise and order that the same shall be binding on the absent persons, and they shall be bound accordingly, except where the order has been obtained by fraud or nondisclosure of material facts. [E. O. 16, R. 9*a*.]

41. No cause or matter shall be defeated by reason of the misjoinder or nonjoinder of parties, and the court may in every cause or matter deal with the matter in controversy, so far as regards the rights and interests of the parties actually before it. The court or a judge may, at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court or a judge to be just, order that the names of any parties improperly joined, whether as plaintiffs or defendants, be struck out, and that the names of any parties, whether plaintiffs or defendants, who ought to have been joined, or whose presence before the court may be necessary, in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter, be added. No person shall be added as a plaintiff suing without a next friend, or as the next friend of a plaintiff under any disability, without his own consent in writing thereto. Every party, whose name is so added as a defendant, shall be served with a writ of summons or notice in such manner as the court or a judge may order, and the proceedings as against such party shall be deemed to have begun only on the service of such writ or notice. [E. 133.] C. O. 21, R. 35.

Misjoinder or non-joinder not to defeat cause

Striking out or adding parties

42. Any application, to add or to strike out or substitute a plaintiff or defendant, may be made to the court or a judge at any time before trial by motion supported by affidavit, or at the trial of the action in a summary manner. [E. 134.] C. O. 21, R. 36.

Applications as to parties

43. Where a defendant is added or substituted, the plaintiff shall, unless otherwise ordered by the court or a judge, file an amended copy of and sue out a writ of summons, and serve such new defendant with such writ or notice in lieu of service thereof in the same manner as original defendants are served. [E. 135.]

II.—*Persons under Disabilities.*

44. Infants may sue as plaintiffs by their next friends, and may, in like manner, defend, by their guardians appointed for that purpose. [E. 138.]

Infant plaintiffs and defendants

45. Where lunatics and persons of unsound mind not so found by inquisition might, respectively, before the passing of The Judicature Act in England, have sued as plaintiffs or would have been liable to be sued as defendants in any action or suit, they may respectively sue as plaintiffs in any action by their guardian or next friend, and may in like manner defend any action by their guardians appointed for that purpose. [E. 139.]

Lunatic plaintiffs and defendants

Appearance of infant defendant

46. An infant shall not enter an appearance except by his guardian *ad litem*. No order for the appointment of such guardian shall be necessary, but the solicitor applying to enter such appearance shall make and file an affidavit in the form No. 2 in the appendix hereto, with such variations as circumstances may require. [E. 140.]

Infant served with petition, notice of motion, etc.

47. Every infant, served with a petition or notice of motion or originating summons in a matter, shall appear on the hearing thereof by a guardian *ad litem,* in all cases in which the appointment of a special guardian is not provided for. No order for the appointment of such guardian shall be necessary, but the solicitor by whom he appears shall previously make and file an affidavit as in the last rule mentioned. [E. 141.]

Authority of next friend or relator

48. Before the name of any person shall be used in any action as next friend of any infant, or other party, or as relator, such person shall sign a written authority to the solicitor for that purpose, and the authority shall be filed in the local registrar's office, where the cause or matter is proceeding. [E. 142.]

Consent by infant or lunatic as to procedure

49. In all causes or matters to which any infant or person of unsound mind, whether so found by inquisition or not, or person under any other disability is a party, any consent as to the mode of taking evidence, or as to any other procedure shall, if given with the consent of the court or a judge by the next friend, guardian, or other person acting on behalf of the person under disability, have the same force and effect as if such party were under no disability and had given such consent. [E. 143.]

III.—*Copartners.*

Suits in firm name

50. Any two or more persons claiming, or being liable as copartners and carrying on business within the jurisdiction, may sue or be sued in the name of the respective firms (if any) of which such persons were copartners at the time of the accruing of the cause of action; and any party to an action may, in such case, apply by notice of motion to a judge for a statement of the names and addresses of the persons who were, at the time of the accruing of the cause of action, copartners in any such firm to be furnished in such manner, and verified on oath or otherwise, as the court or a judge may direct.

(2) Any person carrying on business in the name of a firm, apparently consisting of more than one person, may be sued in the name of such firm; and, so far as the nature of the case will permit, all rules relating to proceedings against firms shall apply. [E. 648*a* and 648*b*.] C. O. 21, R. 37.

Plaintiff firm, demand for names of persons composing

Default in furnishing

Effect when furnished

51. When a writ is sued out by partners in the name of their firm, the plaintiffs or their solicitors shall, on demand in writing by, or on behalf of, any defendant, forthwith declare in writing the names and places of residence of all the persons constituting the firm on whose behalf the action is brought. And if the plaintiffs or their solicitors shall fail to comply with such demand, all proceedings in the action may, upon an application for that purpose, be stayed upon such terms as the court or a judge may direct. And when the names of the partners are so declared, the action shall proceed in the same manner and the same consequences in all respects shall follow as if they had been named as the plaintiffs in the writ. But all the proceedings shall, nevertheless, continue in the name of the firm. [E. 648*b*.] C. O. 21, R. 38.

Service on partnerships

52. Where persons are sued as partners in the name of their firm under rule 50, the writ shall be served either upon any one or more of the partners or at the principal place, within the jurisdiction, of the business of the partnership upon any person having at the time of service the control or management of the partnership business there; and subject to these rules, such service shall be deemed good service upon the firm so sued, whether any of the members thereof are out of the jurisdiction or not, and no leave to issue a writ against them shall be necessary:

Proviso when dissolved

Provided that in the case of a copartnership which has been dissolved to the knowledge of the plaintiff before the commencement of the action, the writ of summons shall be served upon every person within the jurisdiction sought to be made liable. [E. 648*c*.] C. O. 21, R. 39.

Notice of capacity in which person served

53. When a writ is issued against a firm and is served as directed every person on whom it is served shall be informed by notice in writing given at the time of such service whether he is served as a partner or as a person having the control or management of the partnership business, or in both characters. In default of such notice, the person served shall be deemed to be served as a partner. [E. 648*d*.] C. O. 21, R. 40.

Appearance by partners

54. Where persons are served as partners in the name of their firm, they shall appear individually in their own names; but all subsequent proceedings shall, nevertheless, continue in the name of the firm. [E. 648*e*.] C. O. 21, R. 41.

Writ served on representative

Appearance

55. Where a writ is served upon a person having the control or management of the partnership business, no appearance by him shall be necessary unless he is a member of the firm sued. [E. 648*f*.] C. O. 21, R. 42.

Appearance under protest of person served as partner

56. Any person served as a partner may enter an appearance under protest, denying that he is a partner, but such appearance shall not preclude the plaintiff from otherwise serving the firm, and obtaining judgment against the firm in default of appearance, if no partner has entered an appearance in the ordinary form. [E. 648*g*.] C. O. 21, R. 43.

57. The above rules shall apply to actions between a firm and one or more of its members, and to actions between firms having one or more members in common:

Provided such firm or firms carry on business within the jurisdiction, but no execution shall be issued in such actions without leave of the court or a judge; and on an application for leave to issue execution, all such accounts and inquiries may be directed to be taken and made, and directions given, as may be just. [E. 648*k*.]

(2) Any person carrying on business within the jurisdiction, in a name or style other than his own name, may be sued in such name or style as if it were a firm name; and, so far as the nature of the case will permit, all rules relating to firms shall apply. [E. 648*l*.]

IV.—*Administration and Execution of Trusts.*

Determination of right of unascertained heirs at law, next of kin or class

58. In any case in which the right of an heir-at-law, or the next of kin or a class, shall depend upon the construction which the court or a judge may put upon an instrument, and it shall not be known or shall be difficult to ascertain who is or are such heir-at-law, or next of kin or class, and the court or judge shall consider that, in order to save expense, or for some other reason, it will be convenient to have the questions of construction determined before such heir-at-law, next of kin, or class shall have been ascertained by means of inquiry or otherwise, the court or judge may appoint some one or more persons to represent such heir-at-law, next of kin, or class, and the judgment of the court or judge in the presence of such persons shall be binding upon the heir-at-law, next of kin, or class so represented.

(2) In any other case in which an heir-at-law, or any next of kin or a class, shall be interested in any proceedings, the court or a judge may, if, having regard to the nature and extent of the interest of such persons or any of them, it shall appear expedient on account of the difficulty of ascertaining such persons, or in order to save expense, appoint one or more persons to represent such heir, or to represent all or any of such next of kin or class, and the judgment or order of the court or judge in the presence of the persons so appointed, shall be binding upon the persons so represented. [E. 154.]

Administration, rights of residuary legatee and next of kin

59. Any residuary legatee or next of kin, entitled to a judgment or order for the administration of the personal estate of a deceased person, may have the same without serving the remaining residuary legatees or next of kin. [E. 155.] C. O. 21, R. 45.

Persons interested in proceeds of land

60. Any legatee interested in a legacy charged upon land, and any person interested in the proceeds of land directed to be sold, and who may be entitled to a judgment or order for the administration of the estate of a deceased person, may have the same without serving any other legatee or person interested in the proceeds of the estate. [E. 156.] C. O. 21, R. 46.

Residuary devisees or heirs

61. Any residuary devisee or heir entitled to the like judgment or order, may have the same without serving any coresiduary devisee or coheir. [E. 157.] C. O. 21, R. 47.

Cestuis qui trustent

62. Any one of several *cestuis qui trust,* under any deed or instrument entitled to a judgment or order for the execution of the trusts of the deed or instrument, may have the same without serving any other *cestui qui trust.* [E. 158.] C. O. 21, R. 48.

Protection of property

63. In all cases of actions for the prevention of waste or otherwise for the protection of property, one person may sue on behalf of himself and all persons having the same interest. [E. 159.] C. O. 21, R. 49.

Executor, administrator, trustee

64. Any executor, administrator, or trustee entitled thereto may have a judgment or order against any one legatee, next of kin or *cestui qui trust* for the administration of the estate or the execution of the trusts. [E. 160.] C. O. 21, R. 50.

Conduct of proceedings

65. The court or a judge may require any person to be made a party to any action or proceeding, and may give the conduct of the action or proceeding to such person as he may think fit, and may make such order in any particular case as he may think just for placing the defendant on the record on the same footing in regard to costs as other parties having a common interest with him in the matters in question. [E. 161.] C. O. 21, R. 51.

Costs

Judgments or orders

66. Wherever in any action for the administration of the estate of a deceased person or the execution of the trusts of any deed or instrument, or for the partition or sale of any hereditaments, a judgment or an order has been pronounced or made affecting the rights or interests of persons not parties to the action the court or a judge may direct that any persons interested in the estate or under the trust or in the hereditaments, shall be served with notice of the judgment or order;

Service on persons not parties but interested

and after such notice such persons shall be bound by the proceedings, in the same manner as if they had originally been made parties and shall be at liberty to attend the proceedings under the judgment or order. Any person so served may, within one month after such service, apply to the court or judge to discharge, vary or add to the judgment or order. [E. 162.] C. O. 21, R. 52.

Appearance by

67. It shall not be necessary for any person served with notice of any judgment or order, to obtain an order for liberty to attend the proceedings under such judgment or order, but such person shall be at liberty to attend the proceedings upon entering an appearance in the local registrar's office in the same manner, and subject to the same provisions, as a defendant entering an appearance. [E. 163.] C. O. 21, R. 53.

Entry to be made of service

68. A memorandum of the service upon any person of notice of the judgment or order in any action under the next but one preceding rule shall be entered in the local registrar's office upon due proof by affidavit of such service, and notice of a judgment or order served pursuant to such rule shall be entitled in the action and there shall be indorsed thereon a memorandum in the following form:

Indorsement on notice of judgment

Take notice that from the time of the service of this notice you (*or as the case may be,* the infant *or* person of unsound mind) will be bound by the proceedings in the above cause in the same manner as if you (*or* the said infant *or* person of unsound mind) had been originally made a party and that you (*or* the said infant *or* person of unsound mind) may on entering an appearance at the local registrar's office attend the proceedings under the within mentioned judgment (*or* order) and that you (*or* the said infant *or* person of unsound mind) may within one month after the service of this notice apply to the court to discharge, vary or add to the judgment (*or* order). [E. 164 and 165.] C. O. 21, R. 54.

Service on person under disability

69. Notice of a judgment or order on an infant or person of unsound mind not so found by inquisition shall be served in the same manner as a writ of summons in an action. [E. 166.] C. O. 21, R. 55.

Execution of trusts of will

70. In any cause or matter to execute the trusts of a will it shall not be necessary to make the heir-at-law a party, but the plaintiff shall be at liberty to make the heir-at-law a party where he desires to have the will established against him. [E. 167.] C. O. 21, R. 56.

Parties

Where no legal personal representative court may

71. If in any cause, matter, or other proceeding it shall appear to the court or a judge that any deceased person who was interested in the matter in question has no legal personal

representative, the court or judge may proceed in the absence of any person representing the estate of the deceased person, or may appoint some person to represent his estate for all the purposes of the cause, matter, or other proceeding on such notice to such person (if any) as the court or judge shall think fit, either specially or generally by public advertisement, and the order so made, and any order consequent thereon, shall bind the estate of the deceased person in the same manner in every respect as if a duly constituted legal personal representative of the deceased had been a party to the cause, matter, or proceeding. [E. 168.] C. O. 21, R. 57.

dispense with or appoint representative

72. In any cause or matter for the administration of the estate of a deceased person, no party other than the executor or administrator shall, unless by leave of the court or a judge, be entitled to appear either in court or in chambers on the claim of any person not a party to the cause or matter against the estate of the deceased person in respect of any debt or liability. The court or a judge may direct or give liberty to any other party to the cause or matter to appear, either in addition to or in the place of the executor or administrator, upon such terms as to costs or otherwise as they or he shall think fit. [E. 169.] C. O. 21, R. 58.

Administration

Appearance at chambers in respect of creditors' claims

V.—*Constitutional Questions.*

73. Whenever in any cause, matter, or proceeding depending in the supreme court any question is raised as to the validity or constitutionality of any Act of the Legislature of Saskatchewan or whenever it is sought to have any such Act declared or held *ultra vires* the party so raising or intending to raise such question shall forthwith give notice to the attorney general for Saskatchewan accompanied by a copy of the pleadings or such other documents as may be necessary to clearly indicate the circumstances under which such question arises; and the attorney general or his agent shall be entitled to intervene and to be heard on the argument of such question; and whenever it appears to the court or judge that any such question arises in any cause, matter or proceeding the court or judge shall not decide such question until the attorney general is so notified (or as the court or judge may direct) and given an opportunity of being heard by the court or judge by himself or his agent. C. O. 21, R. 59.

Questions raised involving validity of Acts

Notice to attorney general

VI.—*Third Party Procedure.*

74. Where a defendant claims to be entitled to contribution, or indemnity over against any person not a party to the action, he may, by leave of the court or a judge, to be obtained *ex parte* issue a notice (hereinafter called the third party notice) to that effect, stamped with the seal with which writs of

Notice to third party

Filing and service

summons are sealed; a copy of such notice shall be filed with the proper officer and served on such person according to the rules relating to the service of writ of summons. The notice shall state the nature and grounds of the claim, and shall unless otherwise ordered by the court or a judge, be served within the time limited for delivering his defence. Such notice may be in the form or to the effect of form No. 3 in appendix hereto with such variations as circumstances may require and therewith shall be served a copy of the statement of claim. [E. 170.] C. O. 21, R. 60.

Appearance of third party

75. If a person not a party to the action who is served as mentioned in the preceding rule (hereinafter called the third party), desires to dispute the plaintiff's claim in the action as against the defendant on whose behalf the notice has been given, or his own liability to the defendant, the third party must enter an appearance in the action within ten days from

Admission by non-appearance

the service of the notice. In default of his so doing, he shall be deemed to admit the validity of the judgment obtained against such defendant, whether obtained by consent or otherwise, and his own liability to contribute or indemnify, as the case may be, to the extent claimed in the third party notice:

Leave to appear after default

Provided always, that a person so served and failing to appear within the said period of ten days may apply to the court or a judge for leave to appear, and such leave may be given upon such terms (if any) as the court or judge shall think fit. [E. 171.] C. O. 21, R. 61.

Defendant suffering judgment by default

76. Where a third party makes default in entering an appearance in the action, in case the defendant giving the notice suffer judgment by default, he shall be entitled at any time, after satisfaction of the judgment against himself or before such satisfaction by leave of the court or a judge, to enter judgment against the third party to the extent of the contribution or indemnity claimed in the third party notice:

Rights against third party

Provided that it shall be lawful for the court or a judge to set aside or vary such judgment upon such terms as may seem just. [E. 172.] C. O. 21, R. 62.

Plaintiff succeeding Judgment for defendant against non-appearing third party

77. Where a third party makes default in entering an appearance in the action, in case the action is tried and results in favour of the plaintiff, the judge who tries the action may, at or after the trial, order the entry of such judgment as the nature of the case may require for the defendant giving the notice against the third party:

Proviso as to issue of execution

Provided that execution thereof be not issued without leave of the judge until after satisfaction by such defendant of the verdict or judgment against him. And if the action is finally decided in the plaintiff's favour, otherwise than by trial, the court or a judge may, on application by notice of

motion order such judgment as the nature of the case may require to be entered for the defendant giving the notice against the third party at any time after satisfaction by the defendant of the amount recovered by the plaintiff against him. [E. 173.] C. O. 21, R. 63.

Third party appearing

78. If a third party appears pursuant to the third party notice, the defendant giving the notice, or such third party, may apply to the court or a judge for directions, and the court or judge upon the hearing of such application, may, if satisfied that there is a question proper to be tried as to the liability of the third party to make the contribution or indemnity claimed, in whole or in part, order the question of such liability, as between the third party and the defendant giving the notice, to be tried in such manner, at or after the trial of the action, as the court or judge may direct; and if not so satisfied, may order such judgment as the nature of the case may require to be entered in favour of the defendant giving the notice against the third party. [E. 174.] C. O. 21, R. 64.

Application for directions

What directions may be given

79. The court or judge upon the hearing of the application mentioned in the preceding rule, may, if it shall appear desirable to do so, give the third party liberty to defend the action, upon such terms as may be just, or to appear at the trial and take such part therein as may be just, and generally may order such proceedings to be taken, documents to be delivered, or amendments to be made, and give such directions as to the court or judge shall appear proper for having the question most conveniently determined, and as to the mode and extent in or to which the third party shall be bound or made liable by the judgment in the action. [E. 175.] C. O. 21, R. 65.

Costs

80. The court or a judge may decide all questions of costs, as between a third party and the other parties to the action, and may order any one or more to pay the costs of any other, or others, or give such directions as to costs as the justice of the case may require. [E. 176.] C. O. 21, R. 66.

Defendant claiming against co-defendant

81. Where a defendant claims to be entitled to contribution or indemnity against any other defendant to the action, a notice may be issued and the same procedure shall be adopted, for the determination of such questions between the defendants, as would be issued and taken against such other defendant, if such last mentioned defendant were a third party; but nothing herein contained shall prejudice the rights of the plaintiff against any defendant in the action. [E. 177.] C. O. 21, R. 67.

Plaintiff not to be delayed by questions between defendants

82. A plaintiff is not to be unnecessarily delayed in recovering his claim, by reason of the questions between defendants in which the plaintiff is not concerned; and the judge is to give

such direction as may be necessary to prevent such delay of the plaintiff, where this can be done on terms or otherwise without injustice to the defendants. C. O. 21, R. 68.

VII.—*Change of Parties.*

No abatement where cause of action continues

83. A cause or matter shall not become abated by reason of the marriage, death or insolvency of any of the parties, if the cause of action survive or continue, and shall not become defective by the assignment, creation, or devolution of any estate or title *pendente lite;* and, whether the cause of action survives or not, there shall be no abatement by reason of the death of either party between the verdict or finding of the issues of fact and the judgment, but judgment may in such case be entered notwithstanding the death. [E. 178.] C. O. 21, R. 69.

Judgment where death after verdict

Adding parties successors in interest

84. In case of the marriage, death, or assignment, or devolution of the estate by operation of law, of any party to a cause or matter, the court or a judge may, if it be deemed necessary for the complete settlement of all the questions involved, order that the husband, personal representative, trustee or other successor in interest (if any) of such party be made a party, in such manner and on such terms as the court or judge shall think just, and shall make such order for the disposal of the cause or matter as may be just. [E. 179.] C. O. 21, R. 70.

Continuation of action where change of interest

85. In case of an assignment, creation, or devolution of any estate or title *pendente lite,* the cause or matter may be continued by or against the person, to or upon whom such estate or title has come or devolved. [E. 180.] C. O. 21, R. 71.

Adding parties where change of interest

86. Where by reason of marriage, death, or assignment, or any other event occurring after the commencement of a cause or matter, and causing a change or transmission of interest or liability, or by reason of any person interested coming into existence after the commencement of the cause or matter, it becomes necessary or desirable that any person not already a party should be made a party, or that any person already a party should be made a party in another capacity, an order that the proceedings shall be carried on between the continuing parties, and such new party or parties may be obtained *ex parte,* on application to the court or a judge, upon an allegation of such change or transmission of interest or liability, or of any such person interested having come into existence. [E. 181.] C. O. 21, R. 72.

Service of order

87. An order obtained as in the last preceding rule shall, unless the court or judge shall otherwise direct, be served upon the continuing party or parties, or their solicitors, and

also upon each such new party unless the person making the application be himself the only new party; and the order shall, from the time of such service, subject nevertheless to the next two following rules, be binding on the person served therewith, and every person served therewith, who is not already a party to the cause or matter, shall be bound to enter an appearance thereto within the same time, and in the same manner, as if he had been served with a writ of summons. [E. 182.] C. O. 21, R. 74.

Application to discharge order

88. Where any person who is under no disability, or under no disability other than coverture, or being under any disability other than coverture, but having a guardian *ad litem* in the cause or matter, shall be served with such order such person may apply to the court or a judge to discharge or vary such order at any time within twelve days from the service thereof. [E. 183.] C. O. 21, R. 75.

Application to discharge order

89. Where any person being under any disability other than coverture, and not having a guardian *ad litem* in the cause or matter, is served with any such order, such person may apply to the court or a judge to discharge or vary such order, at any time within twelve days from the appointment of a guardian *ad litem* for such party, and until such period of twelve days shall have expired, such order shall have no force or effect as against such last mentioned person. [E. 184.] C. O. 21, R. 76.

Death of sole plaintiff or defendant

Omission to proceed with cause

90. When the plaintiff or defendant in a cause or matter dies, and the cause of action survives, but the person entitled to proceed fails to proceed, the defendant (or the person against whom the cause or matter may be continued) may apply to the court or a judge to compel the plaintiff (or the person entitled to proceed) to proceed within such time as may be ordered; and in default of such proceeding, judgment may be entered for the defendant, or, as the case may be, for the person against whom the cause or matter might have been continued, and in such case if the plaintiff has died, execution may issue as in the case provided for in rule 471. [E. 185.] C. O. 21, R. 77.

Solicitor for plaintiff to give notice of abatement, etc.

91. Where any cause or matter becomes abated, or in the case of any such change of interest as is by this order provided for, the solicitor for the plaintiff or person having the conduct of the cause or matter, as the case may be, shall certify the fact to the proper officer, who shall cause an entry thereof to be made in the procedure book opposite to the name of such cause or matter. [E. 186.] C. O. 21, R. 78.

Cause abated for one year to be struck out

92. Where any cause or matter shall have been standing for one year in the procedure book, marked as "abated," or standing over generally, such cause or matter at the expiration of the year shall be struck out of the procedure book. [E. 187.]

ORDER VII.

JOINDER OF CAUSE OF ACTION.

Uniting causes of action

93. Subject to the following rules of this order, the plaintiff may unite in the same action several causes of action; but, if it appears to the court or a judge that any such causes of action cannot be conveniently tried or disposed of together, the court or judge may order separate trials of any such causes of action to be had, or may make such other order as may be necessary or expedient for the separate disposal thereof. [E. 188.] C. O. 21, R. 79.

Disposal separately

Joinder with actions for recovery of land

94. No cause of action shall, unless by leave of the court or a judge, be joined with an action for the recovery of land except claims in respect of mesne profits or arrears of rent or double value in respect of the premises claimed, or any part thereof, and damages for breach of contract under which the same or any part thereof are held, or for any wrong or injury to the premises claimed:

Provided that nothing in this order contained shall prevent any plaintiff in any action for foreclosure or redemption from asking for or obtaining an order against the defendant for delivery of possession of the mortgaged property to the plaintiff on or after the order absolute for foreclosure or redemption, as the case may be, and such an action for foreclosure or redemption, and for such delivery of possession shall not be deemed an action for the recovery of land within the meaning of these rules;

Provided also, that in case any mortgage security shall be foreclosed by reason of the default to redeem by any plaintiff in a redemption action, the defendant in whose favour such foreclosure has taken place may, by notice of motion, apply to the court or a judge for an order for delivery to him of possession of the mortgaged property, and such order may be made thereupon as the justice of the case shall require. [E. 189.]

Assignee of insolvent

95. Claims by an assignee of an insolvent as such shall not, unless by leave of the court or a judge, be joined with any claim by him in any other capacity. [E. 190.]

96. Claims by or against husband and wife may be joined with claims by or against either of them separately. [E. 191.] Husband and wife

97. Claims by or against an executor or administrator as such may be joined with claims by or against him personally, provided the last mentioned claims are alleged to arise with reference to the estate, in respect of which the plaintiff or defendant sues or is sued as executor or administrator. [E. 192.] Executor, etc.

98. Claims by plaintiffs jointly may be joined with claims by them or any of them separately against the same defendant. [E. 193.] Joint and separate claims

99. The last three preceding rules shall be subject to rules 93, 100 and 101. [E. 194.]

100. Any defendant alleging that the plaintiff has united, in the same action, several causes of action which cannot be conveniently disposed of together, may at any time apply to the court or a judge for an order confining the action to such of the causes of action as may be conveniently disposed of together. [E. 195.] Where cause of action improperly joined

101. If, on the hearing of such application as in the last preceding rule mentioned, it shall appear to the court or a judge that the causes of action are such as cannot all be conveniently disposed of together, the court or judge may order any of such causes of action to be excluded, and consequential amendments to be made, and may make such order as to costs as may be just. [E. 196.] Order to exclude causes of action improperly joined

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ORDER VIII.

APPEARANCE.

102. Within the time limited for appearance by the writ of summons, or afterwards, before the plaintiff has taken any further step in the cause, if the defendant, or if there be more than one defendant in the action, a defendant desires to contest the plaintiff's claim and defend the action, he shall by himself or his solicitor enter an appearance in the office of the local registrar whence the writ of summons issued, and within six days thereafter, or such further time as may by order of the court or a judge be allowed for the purpose, file in the local registrar's office a statement of defence and serve a copy thereof on the plaintiff or his solicitor. C. O. 21, R. 80. Entry of appearance by defendant

Filing and service of defence

Appearance How entered

103. A defendant shall enter his appearance to a writ of summons by delivering to the proper officer a memorandum, in writing, dated on the day of its delivery, and containing the name of the defendant's solicitor, or stating that the defendant defends in person. He shall at the same time deliver to the officer a duplicate of the memorandum, which the officer shall seal with the official seal, showing the date on which it is sealed, and then return it to the person entering the appearance, and the duplicate memorandum so sealed shall be a certificate that the appearance was entered on the day indicated by the seal. [E. 78.]

Notice of appearance

104. A defendant shall, on the day on which he enters an appearance to a writ of summons, give notice of his appearance (form No. 4 in the appendix) to the plaintiff's solicitor, or, if the plaintiff sues in person, to the plaintiff himself. The notice may be given either by notice in writing, served in the ordinary way at the address for service, or by prepaid letter directed to that address, and posted on the day of entering appearance in due course of post, and shall in either case be accompanied by the sealed duplicate memorandum. [E. 79.]

Address for service when defendant appears by solicitor

105. The solicitor of a defendant appearing by a solicitor shall state in such memorandum his place of business and, if his place of business be more than three miles from the local registrar's office, a place, to be called his address for service, which shall not be more than three miles from the local registrar's office, and where any such solicitor is only agent of another solicitor, he shall add to his own name or firm and place of business the name or firm and place of business of the principal solicitor. [E. 80.]

Address for service when defendant appears in person

106. A defendant appearing in person shall state in such memorandum his address; and, if his residence be more than three miles from the local registrar's office, a place, to be called his address for service which shall not be more than three miles from the local registrar's office. [E. 81.]

If no address or fictitious address

107. If the memorandum does not contain such address it shall not be received; and, if any such address shall be illusory or fictitious, the appearance may be set aside by the court or a judge, on the application of the plaintiff. [E. 82.]

Form of memorandum

108. The memorandum of appearance shall be in the form No. 5 in the appendix with such variations as circumstances may require. [E. 83.]

Entry in procedure book

109. Upon receipt of a memorandum of appearance, the officer shall forthwith enter the appearance in the procedure book. [E. 84.]

Where two defendants appear by same solicitor

110. If two or more defendants in the same action shall appear by the same solicitor, and at the same time, the names of all the defendants so appearing shall be inserted in one memorandum. [E. 87.]

Where defendant appears after time for appearance

111. A defendant may appear at any time before judgment. If he appear at any time after the time limited by the writ for appearance, he shall not, unless the court or a judge shall otherwise order, be entitled to any further time for delivering his defence, or for any other purpose than if he had appeared according to the writ. [E. 92.]

Service where no appearance

112. Where no appearance has been entered for a party all orders, notices, papers, documents in or relating to the action may, unless otherwise ordered by the court or a judge, be served by filing the same or a copy thereof in the local registrar's office. C. O. 21, R. 82.

Recovery of land

Appearance by person not defendant

113. Any person not named as a defendant in a writ of summons in an action for the recovery of land may, by leave of the court or a judge, appear and defend, on filing an affidavit showing that he is in possession of the land either by himself or by his tenant. [E. 95.] C. O. 21, R. 83.

Landlord to appear as such

114. Any person appearing to defend an action for the recovery of land as landlord in respect of property whereof he is in possession only by his tenant, shall state in his appearance that he appears as landlord. [E. 96.] C. O. 21, R. 84.

Party obtaining leave to defend

Subsequent proceedings

115. Where a person, not named as defendant in any writ of summons for the recovery of land, has obtained leave of the court or a judge to appear and defend, he shall enter an appearance according to the foregoing rules of this order intituled in the action against the party named in the writ as defendant; and shall forthwith give notice of such appearance to the plaintiff's solicitor or to the plaintiff if he sues in person, and shall in all subsequent proceedings be named as a party defendant to the action. [E. 97.] C. O. 21, R. 85.

Defence may be limited to part of property

116. Any person appearing to a writ of summons for the recovery of land shall be at liberty to limit his defence to a part only of the property mentioned in the writ, describing that part with reasonable certainty in his appearance, or in a notice intituled in the action and signed by him or his solicitor. Such notice shall be served within four days after appearance; and an appearance, where the defence is not limited as above mentioned, shall be deemed an appearance to defend for the whole. [E. 98.] C. O. 21, R. 86.

Form

117. The notice mentioned in the last preceding rule shall be in the form No. 6 in the appendix with such variations as circumstances may require. [E. 99.]

Application to set aside writ or service

118. A defendant, before appearing, shall be at liberty without obtaining an order to enter, or entering a conditional appearance, to serve notice of motion to set aside the service of the writ upon him, or to discharge the order authorising such service. [E. 100.] C. O. 21, R. 87.

ORDER IX.

DEFAULT OF APPEARANCE.

Default of appearance by infant or person of unsound mind

119. Where no appearance has been entered to a writ of summons for a defendant, who is an infant or a person of unsound mind not so found by inquisition, the plaintiff shall, before further proceeding with the action against the defendant, apply to the court or a judge for an order that some proper person be assigned guardian of such defendant, by whom he may appear and defend the action. But no such order shall be made unless it appears on the hearing of such application that the writ of summons was duly served and that notice of such application was, after the expiration of the time allowed for appearance and at least six clear days before the day in such notice named for hearing the application, served upon or left at the dwelling house of the person with whom or under whose care such defendant was at the time of serving such writ of summons, and also (in the case of such defendant being an infant not residing with or under the care of his father or guardian) served upon or left at the dwelling house of the father or guardian, if any, of such infant, unless the court or judge at the time of hearing such application shall dispense with such last mentioned service. [E. 101.] C.O. 21, R. 88.

Writ and affidavit of service to be filed

120. Where any defendant fails to appear to a writ of summons, and the plaintiff is desirous of proceeding upon default of appearance, he shall, before taking such proceeding upon default, file the writ (or an order dispensing with such filing) with an affidavit of service, or of compliance with any order for substitutional service, as the case may be. [E. 102.] C. O. 21, R. 89.

Claim liquidated

121. Where the plaintiff's claim is for a debt or liquidated demand only, and the defendant fails, or all the defendants, if more than one, fail, to appear thereto, the plaintiff may after the time limited for appearance has elapsed, enter final judgment for any sum, not exceeding the sum claimed in the action, together with legal interest, and costs of suit. [E. 103.] C.O. 21, R. 90.

Liquidated demand

122. Where the plaintiff's claim is for a liquidated demand, and there are several defendants, of whom one or more appear, and another or others of them fail to appear, the plaintiff may enter final judgment, as in the preceding rule against such as have not appeared, and may issue execution upon such judgment without prejudice to his right to proceed with the action against such as have appeared. [E. 104.] C.O. 21, R. 91.

Several defendants

Claim, detinue and damages

Nonappearance

123. Where the plaintiff's claim is for pecuniary damages only, or for detention of goods with or without a claim for pecuniary damages and the defendant fails or all the defendants if more than one, fail, to appear, the plaintiff may enter interlocutory judgment and on application of the plaintiff the court or a judge may assess the value or amount of damages, or either of them or order that they shall be ascertained in any way the court or judge may direct. [E. 105.] C.O. 21, R. 92.

Striking out appearing defendants

124. Where the claim is as in the last preceding rule mentioned, and there are several defendants of whom one or more appear and another or others of them fail to appear, the court or a judge, on application of the plaintiff, may order the striking out of any one or more of the defendants who has or have appeared on payment of costs or otherwise as may be considered just, and allow the plaintiff to proceed with his action against the defendant or defendants who has or have not appeared C.O. 21, R. 93.

Interlocutory judgment against nonappearing defendants

125. Where the plaintiff's claim is as in said rule, and there are several defendants of whom one or more appear to the writ, and another or others of them fail to appear, the plaintiff may sign interlocutory judgment against the defendant or defendants so failing to appear, and on application of the plaintiff the value of the goods and the damages, or either of them, as the case may be, shall be assessed as against the defendant or defendants failing to appear, at the same time as the trial of the action, or issue therein against the other defendant or defendants, unless the court or a judge shall otherwise direct. [E. 106.] C. O. 21, R. 94.

Claim, detinue and liquidated demand

126. When the plaintiff's claim is for pecuniary damages only or for detention of goods with or without a claim for pecuniary damages, and also for a liquidated demand, and any defendant fails to appear to the writ, the plaintiff may enter final judgment for the debt or liquidated demand, interest, and costs against the defendant or defendants failing to appear, and interlocutory judgment for the value of the goods and the damages, or the damages only, as the case may be, and proceed as mentioned in such of the rules of this order as may be applicable. [E. 107.] C.O. 21, R. 95.

Claim recovery of land

127. In case no appearance shall be entered in an action for the recovery of land, within the time limited by the writ for appearance, or if an appearance be entered but the defence be limited to part only, the plaintiff shall be at liberty to enter a judgment that the person whose title is asserted in the writ shall recover possession of the land, or of the part thereof to which the defence does not apply. [E. 108.] C. O. 21, R. 96.

Claim, mesne profits, rent or damages and recovery of land

128. When the plaintiff's claim is for mesne profits, arrears of rent, double value, or damages for breach of contract or wrong or injury to the premises, upon a writ for the recovery of land, he may enter judgment as in the last preceding rule mentioned for the land, and may proceed as in the other preceding rules mentioned as to such other claim. [E. 109.] C. O. 21, R. 97.

Claim, foreclosure, sale, redemption or administration

129. Where the action is in respect of a mortgage, lien or charge, and the plaintiff claims foreclosure or sale or redemption, or where the action is for the administration of an estate or partition, the plaintiff if the defendant does not appear shall be entitled to such a judgment upon such evidence as the court or a judge may order. C. O. 21, R. 98.

Judgment in other actions

130. In any other action upon default of appearance by one or more defendants, the plaintiff may apply *ex parte* to the court or a judge for an order for judgment, and the court or judge shall order such judgment to be entered as the plaintiff appears entitled to, with or without evidence of the truth of the statement of claim (which may be given *viva voce* or by affidavit) in the discretion of the court or judge:

Provided that no final judgment of nullity of marriage shall be entered (whether or not there is default of appearance or defence) until the court or a judge is satisfied, by evidence of the truth and sufficiency of the facts on which the claim for such judgment is founded. C. O. 21, R. 99; 1901, c. 10, s. 3.

Setting aside judgment by default

131. Any judgment entered upon default of appearance or in delivering any pleading, or in compliance with any order, may be set aside or varied by the court or a judge upon such terms as may be just. C. O. 21, R. 100.

Where several defendants, some not served

132. Where in an action there are several defendants of whom one or more have been served, and another or others of them have not, the court or a judge may order the striking out of the defendant or defendants not served, and allow the plaintiff to proceed with his action against the defendant or defendants served, on payment of costs or otherwise as may be considered just. C. O. 21, R. 101.

133. Any order made by the court or judge under any of the rules of this order, and any judgment entered pursuant to such order, may be set aside or varied by the court or a judge upon such terms as may be just. [E. 110.] C. O. 21, R. 102. Setting aside or varying orders or judgments

134. Where a defendant or respondent to an originating summons, to which an appearance is required to be entered, fails to appear within the time limited, the plaintiff or applicant may apply to the court or a judge for an appointment for the hearing of such summons; the court or judge shall appoint a time for the hearing of such summons, upon such conditions (if any) as they or he shall think fit. [E. 114*a*.] Default of appearance to originating summons

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ORDER X.

STRIKING OUT APPEARANCE.

135. Where the action is brought to recover a debt or a liquidated demand, and the defendant, or one or more of the defendants if there are several defendants has or have appeared, the plaintiff may, on affidavit made by himself or by any other person who can swear positively to the facts, verifying the cause of action and the amount claimed (if any) and stating that in his belief there is no defence to the action, apply to a judge for liberty to enter final judgment for the amount of the claim, or the amount so verified as due the plaintiff together with interest (if any) or for the recovery of the land (with or without rent or mesne profits), as the case may be, and costs. The judge may thereupon, unless the defendant, by affidavit, or otherwise, shall satisfy him that he has a good defence to the action on the merits, or disclose such facts as may be deemed sufficient to entitle him to defend, make an order empowering the plaintiff to enter judgment accordingly. Application by plaintiff to strike out appearance where claim liquidated; Judgment unless defence shown

(2) If, on the hearing of the application under this rule, it shall appear that a cause or causes of action other than for a debt or a liquidated demand have been joined therewith, the judge may, if he shall think fit, forthwith amend the statement of claim by striking out such other cause or causes of action, or may deal with such claims for debts or liquidated demands, as if no other claim had been joined in the action, and allow the action to proceed as respects the residue of the claim. [E. 115.] C. O. 21, R. 103. Unliquidated demand included

136. The application by the plaintiff for leave to enter final judgment under the last preceding rule shall be by notice of motion, returnable not less than four clear days after ser- Final judgment; Service

Affidavits

vice, accompanied by a copy of the affidavit and exhibits referred to therein, unless service of copies of such exhibits be dispensed with by a judge. [E. 116.] C. O. 21, R. 104.

Defendant may show cause

137. The defendant may show cause against such application by affidavit, or (except in actions for the recovery of land) by offering to bring into court the amount claimed in the action, or the judge may allow the defendant to be examined upon oath.

(2) The affidavit shall state whether the defence alleged goes to the whole or to part only, and (if so) to what part of the plaintiff's claim.

Cross examination

(3) The judge may, if he thinks fit, order the defendant, or in the case of a corporation, any officer thereof, to attend and be examined upon oath, and to produce any leases, deeds, letters, books or documents or copies of or extracts therefrom. [E. 117.] C. O. 21, R. 105.

Defendant admitting or failing to meet application as to part

138. If it appears that the defence set up by the defendant applies only to a part of the plaintiff's claim, or that any part of the claim is admitted, the plaintiff shall have judgment forthwith for such part of his claim as the defence does not apply to, or as is admitted, subject to such terms (if any) as to suspending execution, or the payment of the amount levied or any part thereof into court by the sheriff, the taxation of costs, or otherwise, as the judge may think fit; and the defendant may be allowed to defend as to the residue of the plaintiff's claim. [E. 118.] C. O. 21, R. 106.

One defendant may be permitted to defend and judgment against other

139. If it appears to the judge that any defendant has a good defence to, or ought to be permitted to defend the action, and that any other defendant has not such defence and ought not to be permitted to defend, the former may be permitted to defend, and the plaintiff shall be entitled to enter final judgment against the latter, and may issue execution upon such judgment without prejudice to his right to proceed with his action against the former. [E. 119.] C. O. 21, R. 107.

Conditional leave to defend

140. Leave to defend may be given unconditionally or subject to such terms as to giving security or time and mode of trial, or otherwise, as the judge may think fit. [E. 120.] C. O. 21, R. 108.

Reference to local master

141. Upon the hearing of the application, with the consent of the parties, an order may be made referring the action to a local master, or the action may be finally disposed of without appeal in a summary manner. [E. 120*a*.]

142. (*a*) The costs of and incident to all applications under this order shall be dealt with by the judge on the hearing of the application, who shall order by, and to whom and when, the same shall be paid, or may refer them to the judge at the trial: Costs

Provided that in case no trial afterwards takes place, or no order as to costs is made, the costs are to be costs in the cause.

(*b*) If the plaintiff makes an application under this order where the case is not within the order, or where the plaintiff, in the opinion of the judge, knew that the defendant relied on a contention which would entitle him to unconditional leave to defend, in any of such cases the application shall be dismissed with costs to be paid forthwith by the plaintiff. [E. 120*c*.]

143. A tenant shall have the same right to relief after a judgment, under this order, for recovery of land on the ground of forfeiture for nonpayment of rent, as if the judgment had been given after trial. [E. 120*d*.] Tenants rights

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ORDER XI.

PLEADING GENERALLY.

144. The following rules of pleading shall be used in the supreme court. [E. 197.]

145. The defendant shall deliver to the plaintiff his defence, set off, or counterclaim (if any), and the plaintiff shall deliver his reply (if any) to such defence, set off, or counterclaim. Such statements shall be as brief as the nature of the case will admit, and the taxing officer in adjusting the costs of the action shall, at the instance of any party, or may without any request, inquire into any unnecessary prolixity, and order the costs occasioned by such prolixity to be borne by the party chargeable with the same. [E. 198.] Delivery of pleadings

146. Every pleading shall contain, and contain only, a statement in a summary form of the material facts on which the party relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved, and shall, when necessary, be divided into paragraphs, numbered consecutively. Dates, sums and numbers shall be expressed in figures and not in words. They shall be signed by the solicitor, or by the party if he sues or defends in person. [E. 200.] C. O. 21, R. 109. Pleading to state facts only, not evidence; Paragraphing; Figures to be used

Set off and counterclaim

147. A defendant in an action may set off or set up by way of counterclaim against the claims of the plaintiff, any right or claim, whether such set off or counterclaim sound in damages or not, and such set off or counter claim shall have the same effect as a cross action, so as to enable the court to pronounce a final judgment in the same action, both on the original and cross claim. But the court or a judge may, on application of the plaintiff before trial, if in the opinion of the court or a judge such set off or counterclaim cannot be conveniently disposed of in the pending action, or ought not to be allowed, refuse permission to the defendant to avail himself thereof. [E. 199.] C. O. 21, R. 110.

Striking out

Particulars

148. In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary, particulars (with dates and items if necessary) shall be stated in the pleading:

Provided that, if the particulars be of debt, expenses or damages, and exceed three folios, that fact must be so stated, with a reference to full particulars already delivered or to be delivered with the pleading. [E. 202.]

Further particulars

149. A further and better statement of the nature of the claim or defence, or further and better particulars of any matter stated in any pleading, notice, or written proceeding requiring particulars, may in all cases be ordered, upon such terms as to costs and otherwise as may be just. [E. 203.] C. O. 21, R. 112.

Time for pleading Order for particulars No stay

150. The party at whose instance particulars have been delivered under a judge's order shall, unless the order otherwise provides, have the same length of time for pleading after the delivery of the particulars that he had at the return of the notice of motion. Save as in this rule provided, an order for particulars shall not, unless the order otherwise provides, operate as a stay of proceedings, or give any extension of time. [E. 204.]

Mode of delivering pleading

151. Every pleading or other document required to be delivered to a party, or between parties, shall be delivered in the manner now in use to the solicitor of every party who appears by a solicitor, or to the party if he does not appear by a solicitor, but if no appearance has been entered for any party, then such pleading or document shall be delivered by being filed with the proper officer. [E. 206.]

Not guilty by statute

152. Nothing in these rules contained shall affect the right of any defendant to plead not guilty by statute. But

if the defendant so plead, he shall not plead any other defence to the same cause of action without the leave of the court or a judge. And every defence of not guilty by statute shall have the same effect as a plea of not guilty by statute has heretofore had. [E. 208.] C. O. 21, R. 113.

Allegations not denied admitted

153. Every allegation of fact in any pleading not being a petition or summons, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the opposing party, shall be taken to be admitted, except as against an infant, lunatic, or person of unsound mind not so found by inquisition. [E. 209.] C. O. 21, R. 114.

Conditions precedent

154. Any condition precedent, the performance or occurrence of which is intended to be contested, shall be distinctly specified in his pleading by the plaintiff or defendant, as the case may be; and, subject thereto, an averment of the performance or occurrence of all conditions precedent necessary for the case of the plaintiff or defendant shall be implied in his pleadings. [E. 210.] C. O. 21, R. 115.

All grounds of defence or answer to be raised

155. The defendant or plaintiff, as the case may be, must raise by his pleadings all matters which show the action or counterclaim not to be maintainable, or that the transaction is either void or voidable in point of law, and all such grounds of defence or reply, as the case may be, as if not raised would be likely to take the opposite party by surprise or would raise issues of fact not arising out of the preceding pleadings, as for instance, fraud, statute of limitations, release, payment, performance, facts showing illegality either by statute or common law, or statute of frauds. [E. 211.] C. O. 21, R. 116.

Departure

156. No pleading, not being a petition or summons, shall, except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleadings of the party pleading the same. [E. 212.] C. O. 21, R. 117.

Denials must be specific

157. It shall not be sufficient for a defendant in his statement of defence to deny generally the grounds alleged by the statement of claim, or for the plaintiff in his reply to deny generally the grounds alleged in a defence by way of counterclaim; but each party must deal specifically with each allegation of fact of which he does not admit the truth, except damages. [E. 213.] C. O. 21, R. 118.

Damages

Joinder of issue

158. Subject to the last preceding rule, the plaintiff by his reply may join issue upon the defence, and each party in his pleading (if any) subsequent to reply may join issue upon

the previous pleading. Such joinder of issue shall operate as a denial of every material allegation of facts in the pleading upon which issue is joined; but it may except any facts which the party may be willing to admit, and shall then operate as a denial of the facts not so admitted. [E. 214.]

Pleadings must answer point of substance and not be evasive

159. When a party in any pleading denies an allegation of fact in the previous pleading of the opposite party, he must not do so evasively, but answer the point of substance. Thus, if it is alleged that he received a certain sum of money, it shall not be sufficient to deny that he received that particular amount; but he must deny that he received that sum or any part thereof, or else set out how much he received. And if an allegation is made with divers circumstances, it shall not be sufficient to deny it along with those circumstances. [E. 215.] C. O. 21, R. 119.

Denial of contract

160. When a contract, promise, or agreement is alleged in any pleading, a bare denial of the same by the opposite party shall be construed only as a denial in fact of the express contract, promise, or agreement alleged, or of the matters of fact from which the same may be implied by law, and not as a denial of the legality or sufficiency in law of such contract, promise, or agreement, whether with reference to the Statute of Frauds or otherwise. [E. 216.] C. O. 21, R. 120.

Effect of documents may be alleged

161. Whenever the contents of any document are material, it shall be sufficient in any pleading to state the effect thereof as briefly as possible, without setting out the whole or any part thereof unless the precise words of the documents or any part thereof are material. [E. 217.] C. O. 21, R. 121.

Allegation of malice, fraud, knowledge, etc.

162. Whenever it is material to allege malice, fraudulent intention, knowledge, or other condition of the mind of any person, it shall be sufficient to allege the same as a fact without setting out the circumstances from which the same is to be inferred. [E. 218.] C. O. 21, R. 122.

Allegation that person had notice

163. Whenever it is material to allege notice to any person of any fact, matter, or thing, it shall be sufficient to allege such notice as a fact, unless the form or the precise terms of such notice, or the circumstances from which such notice is to be inferred, be material. [E. 219.] C. O. 21, R. 123.

Contract or relation implied from letters, etc.

164. Whenever any contract or any relation between any persons, is to be implied from a series of letters or conversations, or otherwise from a number of circumstances, it shall be sufficient to allege such contract or relation as a fact, and to refer generally to such letters, conversations, or circum-

stances without setting them out in detail. And if in such case the person so pleading desires to rely in the alternative upon more contracts or relations than one as to be implied from such circumstances, he may state the same in the alternative. [E. 220.] C. O. 21, R. 124. Alternatives

165. Neither party need in any pleading allege any matter of fact which the law presumes in his favour or as to which the burden of proof lies upon the other side, unless the same has first been specifically denied: *e.g.*, consideration for a bill of exchange, where the plaintiff sues only on the bill, and not for the consideration as a substantive ground of claim. [E. 221.] C. O. 21, R. 125. Presumptions of law

166. No technical objection shall be raised to any pleading on the ground of any alleged want of form. [E. 222.] C. O. 21, R. 126. Want of form

167. The court or a judge may at any stage of the proceedings order to be struck out or amended any matter in any pleading which may be unnecessary or scandalous or which may tend to prejudice, embarrass, or delay the fair trial of the action; and may in any such case, if they or he shall think fit, order the costs of the application to be paid between solicitor and client. [E. 223.] C. O. 21, R. 127. Unnecessary, scandalous or embarrassing matter

168. In case of any action founded upon a bill of exchange or other negotiable instrument the court or a judge may order that the loss of such instrument shall not be set up, provided such indemnity as they or he approves of is given against the claims of any other person upon such negotiable instrument. C. O. 21, R. 128. Loss of negotiable instrument

169. Every pleading may be either printed or written or partly written and partly printed. [E. 205.] C. O. 21, R. 129. Pleadings written or printed

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ORDER XII.

STATEMENT OF CLAIM.

170. Every statement of claim shall state specifically the relief which the plaintiff claims, either simply or in the alternative, and it shall not be necessary to ask for general or other relief, which may always be given, as the court or a judge may think just, to the same extent as if it had been asked for. And the same rule shall apply to any counterclaim made, or relief claimed by the defendant, in his defence. [E. 230.] Relief claimed to be stated specifically

Several distinct claims

171. Where the plaintiff seeks relief in respect of several distinct claims or causes of complaint founded upon separate and distinct grounds, they shall be stated, as far as may be, separately and distinctly. And the same rule shall apply where the defendant relies upon several distinct grounds of defence, set off, or counterclaim founded upon separate and distinct facts. [E. 231.]

Stated or settled account

172. In every case in which the cause of action is a stated or settled account, the same shall be alleged with particulars; but in every case in which a statement of account is relied on by way of evidence or admission of any other cause of action which is pleaded, the same shall not be alleged in the pleadings. [E. 232.]

ORDER XIII.

DEFENCE AND COUNTERCLAIM.

Mere denial of debt inadmissible

173. In actions for a debt or liquidated demand in money a mere denial of the debt shall be inadmissible [E. 234.]

Actions on bills, cheques, etc.

174. In actions upon bills of exchange, promissory notes, or cheques, a defence in denial must deny some matter of fact: *e.g.*, the drawing, making, indorsing, accepting, presenting, or notice of dishonour of the bill or note. [E. 235.]

Actions for debt or liquidated demand on contract

175. In actions upon a contract, express or implied (as, for instance, on a bill of exchange, promissory note, or cheque, or other simple contract debt) or on a bond or contract under seal for payment of a liquidated amount of money, a defence in denial must deny such matters of fact, from which the liability of the defendant is alleged to arise, as are disputed: *e.g.*, in actions for goods bargained and sold or sold and delivered, the defence must deny the order or contract, the delivery, or the amount claimed; in an action for money had and received, it must deny the receipt of the money, or the existence of those facts which are alleged to make such receipt by the defendant a receipt to the use of the plaintiff. [E. 236.]

No denial necessary as to damages

176. No denial or defence shall be necessary as to damages claimed or their amount; but they shall be deemed to be put in issue in all cases, unless expressly admitted. [E. 237.]

Denial of right of representative party

177. If either party wishes to deny the right of any other party to claim as executor, or as trustee, or in any representative or other alleged capacity, or the alleged constitution of any partnership firm, he shall deny the same specifically. [E. 238.]

178. Where a defendant has appeared to a writ of summons he shall deliver his defence within six days from the time limited for appearance, unless such time is extended by the court or a judge. [E. 239.] Time for delivery of defence

179. Where the court or a judge shall be of opinion that any allegations of fact denied or not admitted by the defence ought to have been admitted, the court or judge may make such order as shall be just with respect to any extra costs occasioned by their having been denied or not admitted. [E. 242.] Costs occasioned by denial or nonadmission of facts

180. Where any defendant seeks to rely upon any grounds as supporting a right of counterclaim, he shall, in his statement of defence, state specifically that he does so by way of counterclaim. [E. 243.] Counterclaim

181. Where a defendant by his defence sets up any counterclaim which raises questions between himself and the plaintiff, along with any other persons, he shall add to the title of his defence a further title similar to the title in a statement of claim setting forth the names of all the persons who, if such counterclaim were to be enforced by cross action, would be defendants to such cross action, and shall deliver his statement of defence to such of them as are parties to the action within the period within which he is required to deliver, it to the plaintiff. [E. 244.] Title of counterclaim against person other than plaintiff

182. Where any such person as in the last preceding rule mentioned is not a party to the action, he shall be summoned to appear by being served with a copy of the defence, and such service shall be regulated by the same rules as are hereinbefore contained with respect to the service of a writ of summons, and every defence so served shall be indorsed in the form No. 7 in the appendix, or to the like effect. [E. 245.] Service on persons not parties

183. Any person not a defendant to the action who is served with a defence and counterclaim as aforesaid, must appear thereto as if he had been served with a writ of summons to appear in an action. [E. 246.] Appearance by persons not parties

184. Any person named in a defence as a party to a counterclaim thereby made may deliver a reply within the time within which he might deliver a defence if it were a statement of claim. [E. 247.] Reply to counterclaim

185. Where a defendant sets up a counterclaim, if the plaintiff or any other person named in manner aforesaid, as party to such counterclaim, contends that the claim thereby Excluding counterclaim

raised ought not to be disposed of by way of counterclaim, but in an independent action he may at any time before reply apply to the court or a judge for an order that such counterclaim may be excluded, and the court or judge may, on the hearing of such application, make such order as shall be just. [E. 248.]

No defence of common employment

186. No defence shall be pleaded in an action against an employer, or the successor or legal representative of an employer, for damages for the injury or death of an employee, that such injury or death resulted from the negligence of an employee engaged in a common employment. 1900, c. 13, s. 2.

Proceedings on counterclaim where action stayed

187. If, in any case in which the defendant sets up a counterclaim, the action of the plaintiff is stayed, discontinued, or dismissed, the counterclaim may nevertheless be proceeded with. [E. 249.]

Judgment on counterclaim

188. Where in any action a set off or counterclaim is established as a defence against the plaintiff's claim, the court or a judge may, if the balance is in favour of the defendant, give judgment for the defendant for such balance, or may otherwise adjudge to the defendant such relief as he may be entitled to upon the merits of the case. [E. 250.]

Pleading not guilty by statute

189. In every case in which the party shall plead the general issue, intending to give the special matter in evidence by virtue of an Act of Parliament or of the Legislative Assembly, as the case may be, he shall insert in the margin of his pleading the words "by statute," together with the year of the reign in which the Act of Parliament or of the Legislative Assembly on which he relies was passed, and also the chapter and section of such Act, and shall specify whether such Act is public or otherwise; otherwise such defence shall be taken not to have been pleaded by virtue of any Act of Parliament. [E. 252.]

No plea in abatement

190. No plea or defence shall be pleaded in abatement. [E. 253.]

Defence to action for recovery of land when defendant in possession

191. No defendant in an action for the recovery of land, who is in possession by himself or his tenant, need plead his title, unless his defence depends on an equitable estate or right, or he claims relief upon any equitable ground against any right or title asserted by the plaintiff. But, except in the cases hereinbefore mentioned, it shall be sufficient to state by way of defence that he is so in possession, and it shall be taken to be implied in such statement that he denies, or does not admit, the allegations of fact contained in the plaintiff's statement of claim. He may nevertheless rely upon any ground of defence which he can prove, except as hereinbefore mentioned. [E. 254.]

ORDER XIV.

REPLY AND CLOSE OF PLEADINGS.

Reply within eight days

192. A plaintiff shall deliver his reply, if any, within eight days, after the defence or the last of the defences shall have been delivered, unless the time shall be extended by the court or a judge. [E. 276.]

Pleadings subsequent to reply

193. No pleading subsequent to reply other than a joinder of issue shall be pleaded without leave of the court or a judge, and then shall be pleaded only upon such terms as the court or a judge shall think fit. Every pleading subsequent to reply shall be delivered within the time specified in the order giving leave to deliver the same; or, if no time be so specified, within eight days after the delivery of the previous pleading, unless the time shall be extended by the court or a judge. [E. 277.]

Nondelivery of reply or subsequent pleading

194. If the plaintiff does not deliver a reply, or any party does not deliver any subsequent pleading within the period allowed for that purpose, the pleadings shall be deemed to be closed at the expiration of that period, and all the material statements of fact in the pleading last delivered shall be deemed to have been denied and put in issue. [E. 306.] C. O. 21, R. 156.

When pleading deemed closed

195. As soon as any party has joined issue upon the preceding pleading of the opposite party, simply without adding any further or other pleading thereto, or has made default as mentioned in the preceding rule, the pleading between such parties shall be deemed to be closed. [E 280.]

ORDER XV.

PAYMENT INTO AND OUT OF COURT AND TENDER.

Payment into court (1) as satisfaction (2) with defence denying liability

196. Where any action is brought to recover a debt or damages any defendant may before, or at the time of delivering his defence, or at any later time by leave of the court or a judge, pay into court a sum of money by way of satisfaction, which shall be taken to admit the claim or cause of action in respect of which the payment is made; or he may, with a defence denying liability (except in actions or counterclaims for libel or slander) pay money into court, which shall be subject to the provisions of rule 201 hereof. [E. 255.] C. O. 21, R. 130.

Defence, to state payment in

197. Payment into court shall be signified in the defence, and the claim or cause of action in satisfaction of which such payment is made shall be specified therein. [E. 256.] C. O. 21, R. 131.

Tender before action

198. With a defence setting up a tender before action, the sum of money alleged to have been tendered must be brought into court. [E. 257.] C. O. 21, R. 132.

Payment before delivery of defence notice to be served

199. If the defendant pays money into court before delivering his defence, he shall serve upon the plaintiff a notice specifying both the fact that he has paid in such money, and also the claim or cause of action in respect of which such payment has been made; and such notice shall be in the following form, with such variations as circumstances may require:

"Take notice that the defendant has paid into court $, and says that that sum is enough to satisfy the plaintiff's claim (or the plaintiff's claim for, etc.)." [E. 258.] C. O. 21, R. 133.

Payment out to plaintiff in certain cases

200. In the following cases of payment into court under this order, viz.:

(*a*) When payment into court is made before delivery of defence;

(*b*) When the liability of the defendant, in respect of the claim or cause of action in satisfaction of which the payment into court is made, is not denied in the defence;

(*c*) When payment into court is made with a defence setting up a tender of the sum paid;

the money paid into court shall be paid out to the plaintiff on his request, or to his solicitor on the plaintiff's written authority, unless the court or a judge shall otherwise order. [E. 259.] C. O. 21, R. 134.

Where defendant denies liability, acceptance of sum paid in

201. When the liability of the defendant, in respect of the claim or cause of action in satisfaction of which the payment into court has been made, is denied in the defence, the following rules shall apply:

(*a*) The plaintiff may accept, in satisfaction of the claim or cause of action in respect of which the payment into court has been made, the sum so paid in, in which case he shall be entitled to have the money paid out to him as hereinafter provided, notwithstanding the defendant's denial of liability, whereupon all further proceedings, in respect of such claim or cause of action, except as to costs, shall be stayed; or the plaintiff may refuse to accept the

money in satisfaction and reply accordingly, in which case the money shall remain in court subject to the provisions hereinafter mentioned;

(*b*) If the plaintiff accepts the money so paid in, he shall, after service of such notice in the form following, viz.:

"Take notice that the plaintiff accepts the sum of $ paid by you into court in satisfaction of the claim in respect of which it is paid in,"

or after delivery of a reply accepting the money, be entitled to have the money paid out to himself on request, or to his solicitor on the plaintiff's written authority, unless the court or a judge shall otherwise order;

(*c*) If the plaintiff does not accept, in satisfaction of the claim or cause of action in respect of which the payment into court has been made, the sum so paid in, but proceeds with the action in respect of such claim or cause of action, or any part thereof, the money shall remain in court and be subject to the order of the court or a judge, and shall not be paid out of court except in pursuance of an order. If the plaintiff proceeds with the action in respect of such claim or cause of action, or any part thereof, and recovers less than the amount paid into court, the amount paid in shall be applied, so far as is necessary, in satisfaction of the plaintiff's claim, and the balance (if any) shall, under such order, be repaid to the defendant. If the defendant succeeds in respect of such claim or cause of action, the whole amount shall, under such order, be repaid to him. [E. 260.] C O. 21, R. 135.

Payment in not accepted

Proceeding with suit

202. The plaintiff, when payment into court is made before delivery of defence, may within four days after the receipt of notice of such payment, or when such payment is first signified in a defence, may before reply accept in satisfaction of the claim or cause of action in respect of which such payment has been made the sum so paid in, in which case he shall give notice to the defendant in the form last mentioned, and shall be at liberty, in case the entire claim or cause of action is thereby satisfied, to tax his costs after the expiration of four days from the service of such notice, unless the court or a judge shall otherwise order, and in case of nonpayment of the costs within forty-eight hours after such taxation, to sign judgment for his costs so taxed. [E. 261.] C. O. 21, R. 136.

Payment in before defence

Acceptance in satisfaction

Notice thereof

Costs

203. Where money is paid into court in two or more actions which are consolidated, and the plaintiff proceeds to trial in

Consolidated actions

one, and fails, the money paid in and the costs in all the actions shall be dealt with under this order in the same manner as in the action tried. [E. 262.] C. O. 21, R. 137.

Counterclaim

204. A plaintiff may in answer to a counterclaim, pay money into court in satisfaction thereof, subject to the like conditions as to costs, and otherwise as upon payment into court by a defendant. [E. 263.] C. O. 21, R. 138.

Payment out

205. Money paid into court under an order of the court or a judge shall not be paid out of court except in pursuance of an order of the court or judge:

Provided that, where before the delivery of defence money has been paid into court by the defendant pursuant to an order under the provisions of order X hereof, he may (unless the court or a judge shall otherwise order) by his pleading appropriate the whole or any part of such money, and any additional payment if necessary, to the whole or any specified portion of the plaintiff's claim; and the money so appropriated shall thereupon be deemed to be money paid into court pursuant to the preceding rules of this order relating to money paid into court and shall be subject in all respects thereto. [E. 265.] C. O. 21, R. 139.

Persons under disability Moneys awarded to or recovered by

206. In any cause or matter in which a sum of money has been awarded to or recovered by an infant, or person of unsound mind not so found by inquisition, the court or a judge may at or after the trial order that the whole or any part of such sum shall be paid into court to the credit of an account intituled in the cause or matter; and any sum so paid into court and any dividends or interest thereon shall be subject to such orders as may from time to time be made by the court or a judge concerning the same, and may either be invested or be paid out of court or transferred to such persons to be held and applied upon and for such trusts and in such manner as the court or a judge shall direct.

(2) The provisions of this rule shall be extended so as to apply *mutatis mutandis* to the case of an action which is settled on behalf of an infant before trial. [E. 269*a*.] C. O. 21, R. 140.

Disposition of moneys or securities

207. Money paid into court or securities purchased under the provisions of the last preceding rules and the dividends or interest thereon, shall be sold, transferred, or paid out to the party entitled thereto, pursuant to the order of the court or a judge [E. 270.] C. O. 21, R. 141.

Jury not to be informed of payment into court

208. Where a cause or matter is tried by a judge with a jury no communication to the jury shall be made until after the verdict is given, either of the fact that money has been

paid into court, or of the amount paid in. The jury shall be required to find the amount of the debt or damages, as the case may be, without reference to any payment into court. [E. 275*a*.] C. O. 21, R. 142.

209. Cash under the control of or subject to the order of the court may be invested in Dominion or provincial, municipal or school district securities upon order of a judge. [E. 271.] C. O. 21, R. 143. Investment of funds in court

210. All moneys required to be paid into court shall be paid into such chartered bank, as may be designated for the purpose by the Lieutenant Governor in Council, the same to be placed to a special account of the court into which such moneys have been paid and styled "special account," each deposit to reap the benefit of such rate of interest as the bank in which the deposit is made may agree to be paid to be, from time to time, added to the principal; and no moneys ordered to be paid out of court shall be withdrawn from the bank in which the same are deposited, unless the cheque for withdrawal of the same is countersigned by a judge of the court, except that moneys paid into court and deposited in a bank in any judicial district other than the Judicial District of Regina, may be withdrawn by cheques countersigned by the judge of the district court for such judicial district. Banking money paid into court

(2) Moneys required to be paid into court in the several judicial districts shall be paid into the following banks respectively: In what banks to be paid

Judicial District of Cannington, Union Bank of Canada, Arcola;

Judicial District of Moosomin, Union Bank of Canada, Moosomin;

Judicial District of Yorkton, Union Bank of Canada, Yorkton;

Judicial District of Regina, The Imperial Bank of Canada, Regina;

Judicial District of Moose Jaw, The Northern Crown Bank, Moose Jaw;

Judicial District of Saskatoon, The Northern Crown Bank, Saskatoon;

Judicial District of Prince Albert, The Northern Crown Bank, Prince Albert;

Judicial District of Battleford, The Bank of Hamilton, Battleford.

(3) The Lieutenant Governor in Council may also, from time to time, direct that moneys deposited in court in any bank be transferred to such other chartered bank as may be designated by Order in Council and upon such order being passed the registrar, local registrar, or other proper official of the court, shall issue a cheque for the amount on deposit, Lieutenant Governor in Council may transfer moneys

with the accrued interest thereon, less the amount of any outstanding cheques, and such cheque shall be countersigned by a judge of the court and shall be made to the order of the bank designated by the Order in Council.

Direction to pay in

211. The person paying into court shall obtain from the local registrar a direction to the bank to receive the money. The person applying for the direction shall leave a praecipe therefor according to form No. 8 in the appendix. [Ont. 406.] [Ont. 407.]

Bank to give receipt

212. The bank, on receiving money to the credit of any cause or matter, shall give a receipt therefor in duplicate; and one copy shall be delivered to the party making the deposit, and the other shall be posted or delivered the same day to the local registrar. [Ont. 410.]

Conversion of securities Application for

213. Notice of every application for the purpose of conversion of any securities shall be served upon such persons, if any, as the court or a judge may direct. [E. 272.] C.O. 21, R. 145.

Paying out; small intestate estates

214. Where the estate of a deceased person who has died intestate is entitled to a fund, or to a share of a fund in court, not exceeding $500, and it is proved to the satisfaction of the court or a judge that no administration has been taken out to such deceased person, and that his assets do not exceed the value of $500, including the amount of the fund or share to which the estate of such deceased person is entitled, the court or a judge may direct that such fund or share of a fund shall be paid, transferred or delivered to the person who, being a widower, widow, child, father, mother, brother or sister of the deceased, would be entitled to take out administration to the estate of such deceased person. [E. 27*a*.]

ORDER XVI.

MATTERS ARISING PENDING THE ACTION.

Defence or reply to set off or counterclaim arisen after action

215. Any ground of defence which has arisen after action brought but before the defendant has delivered his statement of defence, and before the time limited for his doing so has expired, may be raised by the defendant in his statement of defence, either alone or together with other grounds of defence. And if, after a statement of defence has been delivered, any ground of defence arises to any set-off or counterclaim alleged therein by the defendant, it may be raised by the plaintiff in his reply, either alone or together with any other ground of reply. [E. 282.] C. O. 21, R. 146.

Ground of defence or reply arisen after pleading

216. Where any ground of defence arises after the defendant has delivered his statement of defence, or after the time limited for his doing so has expired, the defendant may, and where any ground of defence to any set-off or counterclaim arises after reply, or after the time limited for delivering a reply has expired, the plaintiff may, within eight days after such ground of defence has arisen, or at any subsequent time by leave of the court or a judge, deliver a further defence or further reply, as the case may be, setting forth the same. [E. 283.] C. O. 21, R. 147.

Further answer may be served

Confession of defence

217. Whenever any defendant, in his statement of defence, or in any further statement of defence as in the last rule mentioned, alleges any ground of defence which has arisen after the commencement of the action the plaintiff may deliver a confession of such defence, which confession may be in the form No. 9 in the appendix with such variation as circumstances may require, and may thereupon sign judgment for his costs up to the time of the pleading of such defence, unless the court or a judge shall either before or after the delivery of such confession, otherwise order. [E 284.] C. O. 21, R. 148.

ORDER XVII.

RAISING POINTS OF LAW, ETC.

Demurrer abolished

218. No demurrer shall be allowed. [E. 285.]

Points of law raised by pleading

219. Any party shall be entitled to raise by his pleading any point of law, and any point so raised shall be disposed of by the judge who tries the cause at or after the trial:

Disposal of

Provided that, by consent of the parties, or by order of the court or a judge on the application of either party, the same may be set down for hearing and disposed of at any time before the trial. [E. 286.] C. O. 21, R. 149.

Judgment where point raised disposes of action, etc.

220. If, in the opinion of the court or a judge, the decision of such point of law substantially disposes of the whole action, or of any distinct cause of action, ground of defence, set-off, counterclaim or reply therein, the court or judge may thereupon dismiss the action or make such order therein as may be just. [E. 287.] C. O. 21, R. 150.

Frivolous or vexatious actions

Pleading disclosing no cause of action or answer

221. The court or a judge may order any pleading to be struck out, on the ground that it discloses no reasonable cause of action or answer, and in any such case, or in the case of the action or defence being shown by the pleadings to be frivolous or vexatious, the court or a judge may order the action to be stayed or dismissed, or judgment to be entered accordingly, as may be just. [E. 288.] C. O. 21, R. 151.

Declaratory judgments

222. No action or proceeding shall be open to objection, on the ground that a merely declaratory judgment or order is sought thereby, and the court may make binding declarations of right, whether any consequential relief is or could be claimed or not. [E. 289.] C. O. 21, R. 152.

False pleadings set aside

223. Statements of defence or other pleadings which are false, frivolous or vexatious may on affidavit be set aside, in whole or in part, on such terms as to costs or otherwise as the court or a judge thinks fit. [N. S. 247*a*.]

ORDER XVIII.

DEFAULT OF PLEADING.

Claim for debt

224. If the plaintiff's claim be only for a debt or liquidated demand, and the defendant does not, within the time allowed for that purpose, deliver a defence, the plaintiff may, at the expiration of such time, enter final judgment for the amount claimed, with costs. [E. 295.] C. O. 21, R. 158.

Default of one or more defendants

225. When in any such action as in the last preceding rule mentioned there are several defendants, if one of them make default as mentioned in the last preceding rule, the plaintiff may enter final judgment against the defendant so making default, and issue execution upon such judgment without prejudice to his right to proceed with his action against the other defendants. [E. 296.] C. O. 21, R. 159.

Claim detinue and damages

226. If the plaintiff's claim be for pecuniary damages only, or for detention of goods with or without a claim for pecuniary damages, and the defendant or all the defendants, if more than one, make default as mentioned in rule 224, the plaintiff may enter an interlocutory judgment against the defendant or defendants, and a judge may, on application of the plaintiff, assess the value of the goods and the damages or the damages only, as the case may be, or the court or a judge may order that the value or amount of damages, or either of them, shall be ascertained in any way which the court or judge may direct. An interlocutory judgment shall be in the form No. 10 in the appendix with such variations as circumstances may require. [E. 297.] C. O. 21, R. 160.

Default of one or more defendants

227. When in any such action as in the preceding rule mentioned there are several defendants, if one or more of them make default as mentioned in rule 224, the plaintiff may enter an interlocutory judgment against the defendant or defendants so making default, and proceed with his action against the others. And in such case the value and amount of damages against the defendant making default shall be assessed,

at the same time, with the trial of the action or issues therein against the other defendants, unless the court or a judge shall otherwise direct. [E. 298.] C. O. 21, R. 161.

Claim liquidated demand and debt and damages

228. If the plaintiff's claim be for a debt or liquidated demand, and also for pecuniary damages only, or for detention of goods with or without a claim for pecuniary damages, and any defendant make default as mentioned in rule 224, the plaintiff may enter final judgment for the debt or liquidated demand, and also enter interlocutory judgment for the value of the goods and the damages, or the damages only, as the case may be, and proceed as mentioned in the last preceding rules. [E. 299.] C. O. 21, R. 162.

Recovery of land

229. In an action for the recovery of land, if the defendant makes default as mentioned in rule 224 the plaintiff may enter a judgment that the person whose title is asserted in the writ of summons shall recover possession of the land, with his costs. [E. 300.] C. O. 21, R. 163.

Claim for mesne profits, arrears of rent or damages

230. Where the plaintiff's claim is for mesne profits, arrears of rent or double value in respect of the premises claimed or any part of them, or damages for breach of contract or wrong or injury to the premises claimed, in an action for the recovery of land, if the defendant makes default as mentioned in rule 224 or if there be more than one defendant, some or one of the defendants make such default, the plaintiff may enter judgment against the defaulting defendant or defendants and proceed as mentioned in rules 225 and 226 hereof. [E. 301.] C. O. 21, R. 164.

Where a defence is delivered to part of claim only

231. If the plaintiff's claim be for a debt or liquidated demand, pecuniary damages only, or for the detention of goods with or without a claim for pecuniary damages, or for any of such matters or for the recovery of land, and the defendant delivers a defence, which purports to offer an answer to part only of the plaintiff's alleged cause of action, the plaintiff may by leave of the court or a judge enter judgment, final, or interlocutory, as the case may be, for the part unanswered, provided that the unanswered part consists of a separate cause of action, or is severable from the rest, as in the case of part of a debt or liquidated demand; provided also that where there is a counterclaim, execution on any judgment as above mentioned in respect to the plaintiff's claim shall not be issued without leave of the court or a judge. [E. 302.] C. O. 21, R. 165.

Other actions, defendant in default

232. In all other actions than those in the preceding rules of this Order mentioned, if the defendant makes default in delivering a defence the opposite party may apply to the court or a judge for such judgment if any as upon the pleadings he

may appear to be entitled to; and the court or judge may order judgment to be entered accordingly or make such other order as may be necessary to do complete justice between the parties. [E. 304.] C. O. 21, R. 166.

Where more than one defendant

233. Where in any such action as mentioned in the last preceding rule there are several defendants, then, if one of such defendants make such default as aforesaid, the plaintiff may either (if the cause of action is severable) set down the action at once on motion for judgment against the defendant so making default, or may set it down against him at the time when it is entered for trial or set down on motion for judgment against the other defendants. [E. 305.] C. O. 21, R. 167.

Default by parties other than plaintiff or defendant

234. In any case in which issues arise in an action other than between plaintiff and defendant, if any party to any such issue makes default in delivering any pleading, the opposite party may apply to the court or a judge for such judgment, if any, as upon the pleadings he may appear to be entitled to. And the court or judge may order judgment to be entered accordingly, or may make such other order as may be necessary to do complete justice between the parties. [E. 307.] C. O. 21, R. 168.

Setting aside judgment by default, or the setting down hereunder

235. Any judgment by default, whether under this order or under any other of these rules, including a judgment entered by order of the court or a judge under rule 232, may be set aside by the court or a judge, upon such terms as to costs or otherwise as such court or judge may think fit. [E. 308.]

ORDER XIX.

NOTICE AND ENTRY OF TRIAL.

Notice of trial by plaintiff

236. Notice of trial may be given in any cause or matter by the plaintiff, or other party, in the position of plaintiff. Such notice may be given with the reply (if any) whether it closes the pleadings or not; or, where there is no reply on the expiration of eight days after the defence, or the last of the defences shall have been delivered, or at any time after the issues of fact are ready for trial. [E. 435.]

Notice of trial by defendant

237. If the plaintiff does not within six weeks after the time when he first becomes entitled to give notice of trial, under the last preceding rule, or within such extended times as the court or a judge may allow, give notice of trial, the defendant may, before notice of trial given by the plaintiff,

give notice of trial, or may apply to the court or a judge to dismiss the action for want of prosecution; and on the hearing of such application, the court or a judge may order the action to be dismissed accordingly, or may make such other order, and on such terms, as to the court or judge may seem just. [E. 436.] Motion to dismiss for want of prosecution

238. Notice of trial shall state whether it is for the trial of the cause or matter or of issues therein; and the place and day for which it is to be entered for trial; and whether the issues of fact or the assessment or inquiry of damages are to be tried by a jury. It shall be in the form No. 11 in the appendix with such variations as circumstances may require. [E. 437.] Form of notice of trial

239. Where by *The Judicature Act* either party may require the issues of fact or the assessment or inquiry of damages to be tried by a jury either party may give to the opposite party twenty days' notice of trial with a demand therein for a jury. Such notice of trial and the demand for a jury shall be filed with the local registrar at least fifteen days before the day fixed for the trial, and the party filing the same shall pay to the local registrar the fees payable as provided by *The Jury Act*. Notice of trial in jury cases

240. In all other cases ten days' notice of trial shall be given, unless the party to whom it is given has consented, or is under terms or has been ordered to take short notice of trial; and shall be sufficient in all cases, unless otherwise ordered by the court or a judge. Short notice of trial shall be five days' notice unless otherwise ordered. [E. 438.] Length of notice of trial

241. Notice of trial shall be given before entering the trial; and the trial may be entered notwithstanding that the proceedings are not closed, provided that notice of trial has been given. [E. 439.] Entry of trial

242. Unless within five days after the notice of trial is given, the trial shall be entered by one party or the other, the notice of trial shall be no longer in force. [E. 440.] Avoidance of trial

243. No notice of trial shall be countermanded except by consent, or by leave of the court or a judge, which leave may be given subject to such terms as to costs, or otherwise, as may be just. [E. 443.] Countermanding notice

Entry for trial by party served with notice

244. If the party giving notice of trial omits to enter the trial on the day or day after giving notice of trial, the party to whom notice has been given may, unless the notice has been countermanded under the last preceding rule, within three days enter the trial. [E. 444.]

Lists of trial to be provided by local registrar

245. The local registrar shall provide two numbered lists for trials with juries, and trials without juries, respectively. The entry shall be made in the proper list in the order of their entry, and the lists shall be open for the inspection of all parties interested therein, at all times, during office hours. At the time of entry one copy of the pleadings certified by the local registrar to be a true copy shall be filed. [E. 448.]

Notice of postponement, withdrawal or settlement

246. When a trial which has been entered has been postponed or withdrawn under rule 250, or settled, the party who made the entry shall immediately thereupon give notice thereof to the local registrar, and such entry shall be expunged from the list. [E. 449.]

Trial entered by both parties

247. If a trial be entered by both parties, it shall be entered on the list in the order of the plaintiff's entry, and the defendant's entry shall be vacated. [E. 452.]

Copies of pleadings to be delivered

248. The party entering the trial shall deliver to the proper officer one copy of the whole pleadings, which shall be for the use of the judge at the trial. [E. 454.]

ORDER XX.

DISCONTINUANCE.

Discontinuance or withdrawal of part of claim after defence

249. The plaintiff may, at any time before receipt of the defendant's defence, or after the receipt thereof before taking any other proceeding in the action (save any interlocutory application), by notice in writing, wholly discontinue his action against all or any of the defendants or withdraw any part or parts of his alleged cause of complaint, and thereupon he shall pay such defendant's costs of the action, or, if the action be not wholly discontinued, the costs occasioned by the matter so withdrawn. Such costs shall be taxed, and such discontinuance or withdrawal, as the case may be, shall not be a defence to any subsequent action. Save as in this rule otherwise provided, it shall not be competent for the plaintiff to withdraw the record or discontinue the action without leave of the court or a judge, but the court or a judge may before, or at, or after the hearing or trial, upon such terms as to the costs, and as to any other action, and otherwise, as may be just, order the

Costs

Subsequent action

Discontinuance at other stages

action to be discontinued, or any part of the alleged cause of complaint to be struck out. The court or a judge may in like manner, and with the like discretion as to terms, upon the application of a defendant, order the whole or any part of his alleged grounds of defence or counterclaim to be withdrawn or struck out, but it shall not be competent to a defendant to withdraw his defence, or any part thereof, without such leave. [E. 290.] C. O. 21, R. 174.

Withdrawal of defence or counterclaim

250. When a cause has been entered for trial, it may be withdrawn by either a plaintiff or defendant, upon producing to the proper officer a consent in writing, signed by the parties. [E. 291.] C. O. 21, R. 175.

Withdrawal after entry for trial

251. Any defendant may enter judgment for the costs of the action, if it is wholly discontinued against him, or for the costs occasioned by the matter withdrawn, if the action be not wholly discontinued, in case such respective costs are not paid within four days after taxation. [E. 292.] C. O. 21, R. 176.

Judgment for costs

252. If any subsequent action shall be brought before payment of the costs of a discontinued action, for the same, or substantially the same cause of action, the court or a judge may, if they or he think fit, order a stay of such subsequent action, until such costs shall have been paid. [E. 293.] C. O. 21, R. 177.

Stay of subsequent action pending payment

ORDER XXI.

AMENDMENT.

253. The court or a judge may, at any stage of the proceedings, allow either party to alter or amend his statement of claim or pleadings, in such manner and upon such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. [E. 309.] C. O. 21, R. 178.

Amendment of pleadings

254. The plaintiff may, without any leave, amend his statement of claim, once at any time before the expiration of the time limited for reply and before replying. [E. 310.] C. O. 21, R. 179.

Plaintiff may amend without leave, when

255. A defendant who has set up any counterclaim may, without any leave, amend such counterclaim at any time before the expiration of the time allowed him for answering the reply and before such answer. [E. 311.] C. O. 21, R. 180.

When a defendant may amend counterclaim without leave

Disallowance of improper amendments

256. Where any party has amended his pleading under either of the last two preceding rules the opposite party may, within eight days after the delivery to him of the amended pleading apply to the court or a judge to disallow the amendment, or any part thereof, and the court or judge may, if satisfied that the justice of the case requires it, disallow the same, or allow it subject to such terms as to costs or otherwise as may be just. [E. 312.] C. O. 21, R. 181.

Pleading to amendments

Default of

257. Where a party has amended his pleadings under rule 254 or 255 the opposite party shall plead to the amended pleading, or amend his pleading, within the time he then has to plead or within eight days from the delivery of the amendment, whichever shall last expire; and in case the opposite party has pleaded before the delivery of the amendment, and does not plead again or amend within the time above mentioned, he shall be deemed to rely on his original pleading in answer to such amendment. [E. 313.] C. O. 21, R. 182.

Leave to amend application

Terms

258. In all cases not provided for by the preceding rules of this order, application for leave to amend may be made by either party to the court or a judge or to the judge at the trial of the action, and such amendment may be allowed upon such terms as to costs or otherwise as may be just. [E. 314.] C. O. 21, R. 183.

Failure to amend after order

259. If a party who has obtained an order for leave to amend does not amend accordingly within the time limited for that purpose by the order, or if no time is thereby limited, then within fourteen days from the date of the order, such order to amend shall on the expiration of such limited time as aforesaid, or of such fourteen days as the case may be, become *ipso facto* void, unless the time is extended by the court or a judge. [E. 315.] C. O. 21, R. 184.

Manner of amending

260. A pleading may be amended by written alterations in the copy which has been delivered, and by additions on paper to be interleaved therewith if necessary, unless the amendments require the insertion of more than 144 words in any one place, or are so numerous or of such a nature that the making of them in writing would render the document difficult or inconvenient to read, in either of which cases the amendment must be made by delivering a printed or written copy of the document as amended. [E. 316.] C. O. 21, R. 185.

Marking amended pleading

261. Whenever a pleading is amended, the same when amended shall be marked with the date of the order, if any, under which the same is so amended, and of the day on which

such amendment is made, in manner following, viz.: "Amended day of (pursuant to order of dated the day of)." [E. 317.] C. O. 21, R. 186.

Delivery of amended pleading

262. Whenever a pleading is amended, such amended document shall be delivered to the opposite party within the time allowed for amending the same. [E. 318.] C. O. 21, R. 187.

Mistakes in judgments or orders

263. Clerical mistakes in judgments or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the court or a judge on notice of motion without an appeal. [E. 319.] C. O. 21, R. 188.

General power to amend

264. The court or a judge may at any time, and on such terms as to costs or otherwise as the court or judge may think just, amend any defect or error in any proceedings and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on the proceedings. [E. 320.] C. O. 21, R. 189.

Costs of amendment

265. The costs of, and occasioned by, any amendment shall be borne by the party making the same, unless the court or a judge shall otherwise order. [E. 321.] C. O. 21. R. 190.

ORDER XXII.

DISCOVERY OF DOCUMENTS, ETC.

Order for production of documents

266. Any party may, after the defence is delivered, or a plaintiff may, after the time for delivering the defence has expired, and any party to an issue may, after the issue has been filed, obtain an order of course upon praecipe, directing the adverse party within 10 days after the service thereof, to make discovery on oath of the documents which are or have been in his possession or power, relating to any matter in question in the action; and to produce and deposit the same with the proper officer for the usual purposes, and such party shall make discovery and produce and deposit the documents accordingly, without further notice. [Ont. 464.]

Affidavit of discovery

267. The affidavit, to be made by a party against whom such order as is mentioned in the last preceding rule has been made, shall specify which, if any, of the documents therein mentioned he objects to produce and it shall be in the form No. 12 in the appendix with such variations as circumstances may require. [E. 355.] C. O. 21, R. 192.

Objections to production

Production of documents

268. It shall be lawful for the court or a judge, at any time during the pendency of any cause or matter, to order the production by any party thereto, upon oath, of such of the documents in his possession or power, relating to any matter in question in such cause or matter as the court or judge shall think right; and the court may deal with such documents, when produced, in such manner as shall appear just. [E. 356.] C. O. 21, R. 193.

Inspection of documents referred to in pleadings or affidavits

269. Every party to a cause or matter shall be entitled, at any time, by notice in writing, to give notice to any other party in whose pleadings or affidavits reference is made to any document, to produce such document for the inspection of the party giving such notice, or of his solicitor, and to permit him or them to take copies thereof; and any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such cause or matter, unless he shall satisfy the court or a judge that such document relates only to his own title, he being a defendant to the cause or matter, or that he had some other cause or excuse which the court or judge shall deem sufficient for not complying with such notice; in which case the court or judge may allow the same to be put in evidence on such terms, as to costs and otherwise, as the court or judge shall think fit. [E. 357.] C. O. 21, R. 194.

270. Notice to any party to produce any documents referred to in his pleading or affidavits shall be in the form No. 13 in the appendix with such variations as circumstances may require. [E. 358.]

Notice of time and place of inspection

271. The party to whom such notice is given shall, within two days from the receipt of such notice, if all the documents therein referred to have been set forth by him in such affidavit as is mentioned in rule 267 hereof, or if any of the documents referred to in such notice have not been set forth by him in any such affidavit, then within four days from the receipt of such notice, deliver to the party giving the same a notice

Objection to production

stating a time within three days from the delivery thereof at which the documents, or such of them as he does not object to produce, may be inspected at the office of his solicitor, or in case of banker's books or other books of account, or books in constant use for the purpose of any trade or business, at their usual place of custody, and stating which (if any) of the documents he objects to produce, and on what ground. Such notice shall be in form No. 14 in the appendix with such variations as circumstances may require. [E. 359.] C. O. 21, R. 195.

272. If the party served with notice under the last preceding rule omits to give such notice of a time for inspection, or objects to give inspection, or offers inspection elsewhere than at the office of his solicitor, the court or judge may, on the application of the party desiring it, make an order for inspection in such place and in such manner as they or he may think fit: Order for inspection

Provided that the order shall not be made, when and so far as the court or a judge shall be of opinion that it is not necessary, either for disposing fairly of the cause or matter, or for saving costs. [E. 360.] C O. 21, R. 196.

(2) Any application to inspect documents, except such as are referred to in the pleadings, particulars, or affidavits of the party against whom the application is made, or disclosed in his affidavit of documents, shall be founded upon an affidavit showing of what documents inspection is sought, that the party applying is entitled to inspect them, and that they are in the possession or power of the other party. The court or judge shall not make such order for inspection of such document when, and so far the court or judge shall be of opinion that it is not necessary, either for disposing fairly of the cause or matter, or for saving costs. [E. 360, amended.] C. O. 21, R. 196.

273. (1) Where inspection of any business books is applied for, the court or a judge may, if they or he shall think fit, instead of ordering inspection of the original books, order a copy of any entries therein to be furnished and verified by the affidavit of some person who has examined the copy with the original entries, and such affidavit shall state whether or not there are in the original book any and what erasures, interlineations, or alterations. Provided that, notwithstanding that such copy has been supplied, the court or a judge may order inspection of the book from which the copy was made. Verified copies

(2) Where on an application for an order for inspection privilege is claimed for any document, it shall be lawful for the court or a judge to inspect the document for the purpose of deciding as to the validity of the claim of privilege.

(3) The court or a judge may, on the application of any party to a cause or matter at any time, and whether an affidavit of documents shall or shall not have already been ordered or made, make an order requiring any other party to state by affidavit whether any one or more specific documents, to be specified in the application, is or are, or has or have at any time been, in his possession or power; and, if not then in his possession when he parted with the same, and what has become thereof. Such application shall be made on an affidavit stating that in the belief of the deponent the party against whom the application is made has, or has at some time

had in his possession or power the document or documents specified in the application, and that they relate to the matters in question in the cause or matter, or to some of them. [E. O. 31, R. 19*a*.]

Discovery or inspection may be reserved

274. If the party from whom discovery of any kind or inspection is sought objects to the same, or any part thereof, the court or a judge may, if satisfied that the right to the discovery or inspection sought depends on the determination of any issue or question in dispute in the cause or matter, or that for any other reason it is desirable that any issue or question in dispute in the cause or matter should be determined before deciding upon the right to the discovery or inspection, order that such issue or question be determined first, and reserve the question as to the discovery or inspection. [E. 362.] C. O. 21, R. 197.

Noncompliance with order for discovery or inspection

Penalty

275. If any party fails to comply with any order for discovery or inspection of documents, he shall be liable to attachment. He shall also, if a plaintiff, be liable to have his action dismissed for want of prosecution, and if a defendant, to have his defence, if any, struck out, and to be placed in the same position as if he had not defended, and the opposite party may apply to the court or a judge for an order to that effect, and an order may be made accordingly. [E. 363.] C. O. 21, R. 198.

Service of order

276. Service of an order for discovery or inspection, made against any party on his solicitor, shall be sufficient service to found an application for an attachment for disobedience to the order. But the party against whom the application for an attachment is made may show, in answer to the application, that he has had no notice or knowledge of the order. [E. 364.] C. O. 21, R. 199.

Solicitor neglecting to inform client of order

277. A solicitor, upon whom an order against any party for discovery or inspection is served under the last preceding rule, who neglects, without reasonable excuse, to give notice thereof to his client, shall be liable to attachment. [E. 365.] C. O. 21, R. 200.

ORDER XXIII.

EXAMINATION FOR DISCOVERY.

Examination of parties before trial

278. Any party to an action or issue, whether plaintiff or defendant, or in the case of a body corporate, any one who is or has been one of the officers of such body corporate may, without order be orally examined before the trial touching the

matters in question in any action by any party adverse in point of interest, and may be compelled to attend and testify in the same manner, upon the same terms, and subject to the same rules of examination as a witness, except as hereinafter provided. C. O. 21, R. 201.

Where discovery from a corporation is sought

279. (1) In the case of a corporation, any officer or servant of such corporation may, without order, be orally examined before the trial touching the matters in question by any party adverse in interest to the corporation, and may be compelled to attend and testify in the same manner, and upon the same terms, and subject to the same rules of examination as a witness, except as hereinafter provided; but such examination shall not be used as evidence at the trial.

(2) After the examination of an officer of a corporation, a party shall not be at liberty to examine any other officer without an order of the court or a judge. [Ont. 439*a*.]

Person beneficially interested

280. A person for whose immediate benefit an action is prosecuted or defended, shall be regarded as a party for the purpose of examination. C. O. 21, R. 202.

Assignor of chose in action examinable for discovery

281. Where an action is brought by an assignee of a chose in action the assignor may, without order, be examined for discovery. [Ont. 441.]

When examination may take place

282. The examination on the part of a plaintiff may take place at any time after the statement of defence of the party to be examined has been delivered, or after the time for delivering the same has expired; and the examination on the part of a defendant may take place at any time after such defendant has delivered his statement of defence; and the examination of a party to an issue at any time after the issue has been filed. C. O. 21, R. 203.

Examining officer

Place of examination

Appointment and subpoena

Conduct money

283. Whenever a party is entitled to examine another party, he may procure an appointment therefor from the local registrar, in the judicial district where the action was commenced, for the examination as hereinafter provided of such party before such local registrar, at whose office such examination is to be held; and such party or person to be examined (upon being served with a copy of the appointment and a subpœna and upon payment of the proper fees) shall attend thereon and submit to examination.

(2) Such examination shall be held at the office of the local registrar nearest to the place where the party to be examined resides. C. O. 21, R. 204.

Appointment to be served on solicitor

284. The party examining shall serve a copy of the appointment upon the solicitor of the party to be examined, if he has a solicitor in the cause, at least forty-eight hours before the examination.

285-a April 2, 1918.

Examination before other person or without jurisdiction

285. Upon application to the court or a judge an order may be made for the examination of any party liable to be examined as aforesaid before any other person or in any other place [illegible] than within or without the jurisdiction of the court than

The following amendments are made to the Rules of Court:

The following Rule is added as Rule 285 (*a*):

285 (*a*).—(1) A party within Saskatchewan shall attend for examination for discovery before the proper officer upon service of an appointment upon his solicitor ten days before the day appointed for the examination, and conduct money shall be paid or tendered to the solicitor.

(2) The solicitor shall forthwith communicate the appointment to the party required to attend, and shall not apply the money to any debt due to the solicitor or any other person, or pay the same otherwise than to such party for his conduct money, and the same shall not be liable to be attached.

(3) Notwithstanding anything in this Rule, the party to be examined may be served personally with a subpoena, as in the preceding Rules provided, in case the party desiring the examination so chooses. New. Ont. R. 337.

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[illegible] books, papers and documents which he would be bound to produce at the trial under a *subpoena duces tecum*. C. O. 21, R. 207.

Certified copies of documents

287. In the event of any witness on his examination, cross examination or re-examination producing any book, document, letter, paper or writing and refusing for good cause to be stated in his deposition to part with the original thereof then a copy thereof or extract therefrom certified by the examiner to be a true and correct copy or extract shall be attached to the depositions and form part thereof. C. O. 21, R. 208.

Further examination on party's own behalf, etc.

288. Any one so examined may be further examined on his own behalf or on behalf of the body corporate of which he is or has been an officer in relation to any matter respecting which he has been examined in chief; and when one of several plaintiffs or defendants has been examined any other plaintiff or defendant united in interest may be examined on his own behalf or on behalf of those united with him in interest to the same extent as the party examined. C. O. 21, R. 209.

Explanatory examination

Time for

289. Such explanatory examination shall be proceeded with immediately after the examination in chief and not at any future period except by leave of the court or a judge and for the purposes of this and the preceding rule when the officer of a body corporate has been so examined as aforesaid on behalf of the body corporate the body corporate shall be deemed to be fully represented by such officer. C. O. 21, R. 210.

Conduct of examination, etc.

290. Any one examined orally under the preceding rules of this order shall be subject to cross examination and re-

examination; and such examination, cross examination and re-examination shall be conducted as nearly as may be as at a trial. C. O. 21, R. 211.

Production of documents for inspection of examiner

291. Any one who admits upon his examination that he has in his custody or power any deed, paper, writing or document relating to the matters in question in the cause, upon the order of the person before whom he is examined shall produce the same for his inspection and for that purpose a reasonable time shall be allowed; but no party shall be obliged to produce any deed, paper, writing or document which is privileged or protected from production. C. O. 21, R. 212.

Appeal from examiner's order

292. Either party may appeal from the order of the examiner and thereupon the examiner shall certify under his hand the question raised and the order made thereon. C. O. 21, R. 213.

Refusal to attend, answer, etc.

Penalty

293. Any one refusing or neglecting to attend at the time and place appointed for his examination or refusing to be sworn or to answer any lawful question put to him by the examiner or by any party entitled so to do or his counsel, solicitor or agent shall be deemed guilty of a contempt of court and proceedings may be forthwith had by attachment. He shall be liable if a plaintiff to have his action dismissed and if a defendant to have his defence, if any, struck out and to be placed in the same position as if he had not defended; and the party examining may apply to the court or a judge to that effect and an order may be made accordingly. C. O. 21, R. 214.

Objections by witness

Decision as to validity

294. If any one under examination objects to any question or questions put to him the question or questions so put and the objection of the witness thereto shall be taken down by the examiner and transmitted by him to the office of the court where the pleadings are filed to be there filed; and the validity of such objection shall be decided by the court or a judge; and the costs of and occasioned by such objection shall be in the discretion of the court or a judge. C. O. 21, R. 215.

Form and completion of deposition

295. Subject to rules 297, 298 and 299 hereof the depositions taken upon any such oral examination as aforesaid shall be taken down in writing by the examiner not ordinarily by question and answer but in the form of a narrative expressed in the first person; and when completed shall be read over to the party examined and shall be signed by him in the presence of the parties or of such of them as may think fit to attend. C. O. 21, R. 216.

Witness not signing deposition

Report of special matter

296. Where any one examined refuses or is unable to sign the depositions then the examiner shall sign the same and the examiner may upon every examination state any special matter to the court if he thinks fit. C. O. 21, R. 217.

Question and answer, objections, etc.

Recording in deposition

297. It shall be in the discretion of the examiner to put down any particular question or answer if there appears to be any special reason for so doing and any question or questions objected to shall at the request of either party be noticed or referred to by the examiner in or upon the depositions; and he shall state his opinion thereon to the counsel, solicitors, agents or parties and if requested by either party he shall on the face of the depositions refer to such statement. C. O. 21, R. 218.

Deposition taken in shorthand

298. In case of an examination before the trial or otherwise than at the trial of an action if the examining party desires to have such examination taken in shorthand he shall unless otherwise ordered by the court or a judge be entitled to have it so taken at the place of examination by the examiner or by a shorthand writer approved and duly sworn by him. C. O. 21, R. 219.

Form and completion of shorthand report

299. Where an examination in a cause or proceeding is taken by the examiner or any other authorised person in shorthand the examination may be taken down by question and answer; and in such cases it shall not be necessary for the depositions to be read over to or be signed by the person examined unless the judge so directs where the examination is taken before a judge or in other cases unless any of the parties so desires. C. O. 21, R. 220.

Certified copy of depositions

300. A copy of the deposition so taken certified by the person taking the same as correct shall for all purposes have the same effect as the original depositions in ordinary cases. C. O. 21, R. 221.

Filing depositions

Certified copies evidence

301. The depositions taken by the examiner shall at the request of any party interested and on payment of his fees be returned to and kept in the office of the court in which the proceedings are being carried on; and office copies of such depositions may be given out and the examinations and depositions certified under the hand of the examiner taking the same or a copy thereof certified under the hand of the proper officer shall without proof of the signature be received and read in evidence saving all just exceptions. C. O. 21, R. 222.

Special report of examiner

302. The person taking an examination may, and if need be shall make a special report to the court in which such proceedings are pending, touching such examinations, and the conduct or absence of any person thereon or relative thereto, and the court may institute such proceedings, and make such order upon such report as justice may require, and as may be instituted and made in any case of contempt of court. C. O. 21, R. 223.

Use of examination at trial

303. Any party may at the trial of a cause, matter or issue, or upon any application or motion, use in evidence any part of the examination of the opposite party, without putting in the whole of such examination:

Provided always that in such case the judge may look at the whole of the examination, and if he shall be of opinion that any other part is so connected with the part put in, that the last mentioned part ought not to be used without such other part, he may direct such other part to be put in. [E. 366.]

(2) Where an officer of a corporation has been examined under rule 278, the whole or any part of the examination may be used as evidence by any party adverse in interest to the corporation, and shall be evidence accordingly; but in the case of a part only being used, the corporation may put in as explanatory any part of the examination which is so connected with the part to be so used, that the last mentioned part ought not to be used without such explanatory part, or may use the remainder of the examination of the officer as evidence on the part of the corporation.

(3) Where a person who has been an officer of a corporation has been examined under rule 278, the whole or any part of his examination may, by leave of the judge, be used in the same manner as in the preceding subrule provided in respect to the examination of an existing officer of a corporation; but this subrule shall not apply to the case of an officer who has been dismissed from the service of the corporation, before service of the appointment for the examination. C. O. 21, R. 224, amend. by 1902, c. 5, s. 1.

Costs of examinations

304. The costs of every interlocutory *viva voce* examination and cross examination shall be borne, in the first instance, by the party who examines and shall be allowed as part of his costs where, and only where, such examination shall appear to the judge at the trial; or, if there is no trial, to the court or a judge, or shall appear to the taxing officer to have been reasonably asked for. [E. 367.]

Medical examination in action in respect of bodily injury

305. In any action brought to recover damages or other compensation for, or in respect of, bodily injury sustained by any person, the court or a judge may order that the person in respect of whose injury, damages or compensation is sought, shall submit to be examined by a duly qualified medical practitioner who is not a witness on either side, and may make such order respecting such examination and costs thereof as he may think fit. The medical practitioner named in such order shall be selected by the court or judge making the order, and may afterwards be a witness on the trial, unless the judge before whom the action is tried otherwise directs. (Ont. 462.)

ORDER XXIV.

ADMISSIONS.

Notice of admission of facts

306. Any party to a cause or matter may give notice, by his pleading, or otherwise in writing, that he admits the truth of the whole or any part of the case of any other party. [E. 371.] C. O. 21, R. 226.

Notice to admit documents

Costs: (1) admissions refused

(2) notice not given

307. Either party may call upon the other party to admit any document, saving all just exceptions; and in case of refusal or neglect to admit, after such notice, the costs of proving any such document shall be paid by the party so neglecting or refusing, whatever the result of the cause or the matter may be, unless at the trial or hearing the court or a judge shall certify that the refusal to admit was reasonable; and no costs of proving any document shall be allowed, unless such notice be given, except where the omission to give the notice is, in the opinion of the taxing officer, a saving of expense. [E. 372.] C. O. 21, R. 227.

Form of notice

308. A notice to admit documents shall be in form No. 15 in the appendix, with such variations as circumstances may require. [E. 373.]

Notice to admit facts

309. Any party may, by notice in writing at any time, not later than twelve days before the day for which notice of trial has been given, call on any other party to admit for the purposes of the cause, matter, or issue only, any specific fact or facts mentioned in such notice. And in case of refusal or neglect to admit the same, within six days after service of such notice, or within such further time as may be allowed by the court or a judge the cost of proving such fact or facts shall be paid by the party so neglecting or refusing, whatever the result of the cause, matter or issue may be, unless at the

Costs where admission refused

trial or hearing the court or a judge certify that the refusal to admit was reasonable, or unless the court or a judge shall at any time otherwise order or direct:

Effect of admission

Provided that any admission made in pursuance of such notice is to be deemed to be made only for the purposes of the particular cause, matter or issue, and not as an admission to be used against the party on any other occasion, or in favour of any person other than the party giving the notice;

Admissions

Amendment or withdrawal

Provided also that the court or a judge may, at any time, allow any party to amend or withdraw any admission so made, on such terms as may be just. [E. 374.] C. O. 21, R. 228.

Form of notice of admissions

310. A notice to admit facts shall be in the form No. 16 in the appendix and admissions of facts shall be in the form No. 17 in the appendix, with such variations as circumstances may require. [E. 375.]

Judgment on admissions

311. Any party may, at any stage of a cause or matter where admissions of fact have been made, either on the pleadings, or otherwise, apply to the court or a judge for such judgment or order as upon such admissions he may be entitled to, without waiting for the determination of any other question between the parties; and the court or a judge may, upon such application, make such order, or give such judgment as the court or judge may think just. [E. 376.] C. O. 21, R. 229.

Evidence of admissions

312. An affidavit of the solicitor, or his clerk, of the due signature of any admissions made in pursuance of any notice to admit documents or facts, shall be sufficient evidence of such admissions, if evidence thereof be required. [E. 377.] C. O. 21, R. 230.

Notice to produce documents

313. Notice to produce documents shall be in the form No. 18 in the appendix, with such variations as circumstances may require. An affidavit of the solicitor, or his clerk, of the service of any notice to produce and of the time when it was served, with a copy of the notice to produce shall, in all cases, be sufficient evidence of the service of the notice and of the time when it was served. [E. 378.]

Notice to admit or produce

Costs

314. If a notice to admit or produce comprises documents which are not necessary, the costs occasioned thereby shall be borne by the party giving such notice. [E. 379.] C. O. 21, R. 231.

ORDER XXV.

ISSUES, INQUIRIES AND ACCOUNTS.

Issues of fact, preparing and settling

315. Where in any cause or matter it appears to the court, or a judge, that the issues of fact in dispute are not sufficiently defined, the parties may be directed to prepare issues, and such issues shall, if the parties differ, be settled by the court or judge. [E. 380.] C. O. 21, R. 232.

Inquiries and accounts, when and how taken

316. The court or a judge may, at any stage of the proceedings in a cause or matter, direct any necessary inquiries or accounts to be made or taken by the local registrar or other competent person, notwithstanding that it may appear that there is some special or further relief sought for or some special issue to be tried, as to which it may be proper that the cause or matter should proceed in the ordinary manner. [E. 381.] C. O. 21, R. 233.

Actions for account

317. In cases where the statement of claim is for an account, or involves the taking of an account, if the defendant either fails to appear or does not after appearance by affidavit, or otherwise, satisfy the court or a judge that there is some preliminary question to be tried, the plaintiff may obtain an order directing the taking of proper accounts; and in cases in which the plaintiff, in the first instance, desires to have an account taken, the statement of claim shall request the same. [E. 121.] C. O. 21, R. 234.

Application, how made

318. An application for such order, as mentioned in the last preceding rule, shall be made by notice of motion, and be supported by an affidavit, when necessary, filed on behalf of the plaintiff, stating concisely the grounds of his claim to an account. The application may be made at any time after the time for entering an appearance has expired. [E. 122.]

Special directions as to mode of taking account

319. The court or a judge may, either by the judgment or order directing an account to be taken or by any subsequent order, give special direction with regard to the mode in which the account is to be taken or vouched; and, in particular, may direct that, in taking the account, the books of account in which the accounts in question have been kept shall be taken as *prima facie* evidence of the truth of the matters therein contained, with liberty to the parties interested to take such objections thereto as they may be advised. [E. 382.] C. O. 21, R. 235.

Account

Verification

320. Where any account is directed to be taken, the accounting party, unless the court or a judge shall otherwise direct, shall make out his account and verify the same by affidavit.

The items on each side of the account shall be numbered consecutively, and the account shall be referred to by the affidavit as an exhibit and be filed in court. [E. 383.] C. O. 21, R. 236.

Production of vouchers

321. Upon taking of any account, the court or a judge may direct that the vouchers shall be produced at the office of the solicitor of the accounting party, or at any other convenient place, and that only such items as may be contested or surcharged shall be brought before the judge in chambers. [E. 383*a*.] C. O. 21, R. 237.

Contested items

Surcharge

322. Any party seeking to charge any accounting party, beyond what he has by his account admitted to have received, shall give notice thereof to the accounting party stating, so far as he is able, the amount sought to be charged and the particulars thereof in a short or succinct manner. [E. 384.] C. O. 21, R. 238.

Inquiry as to outstanding estate

323. Every judgment or order for a general account of the personal estate of a testator, or intestate, shall contain a direction for an inquiry as to what parts (if any) of such personal estate are outstanding or undisposed of, unless the court or a judge shall otherwise direct. [E. 385.] C. O. 21, R. 239.

Numbering directions for account or inquiry

324. Where by any judgment or order, whether made in court or in chambers, any accounts are directed to be taken or inquiries to be made, each such direction shall be numbered so that, as far as may be, each distinct account and inquiry may be designated by a number and such judgment or order shall be in the form No. 19 in the appendix, with such variations as the circumstances of the case may require. [E. 386.] C. O. 21, R. 240.

Just allowances

325. In taking any account directed by any judgment or order, all just allowances shall be made without any direction for that purpose. [E. 387.] C. O. 21, R. 241.

Expediting proceedings, case of undue delay

326. If it shall appear to the court or a judge that there is any undue delay in the prosecution of any accounts or inquiries, or in any other proceedings under any judgment or order, the court or judge may require the party having the conduct of the proceedings, or any other party, to explain the delay, and may thereupon make such order with regard to expediting the proceedings or the conduct thereof, or the stay thereof and as to the costs of the proceedings, as the circumstances of the case may require; and for the purposes aforesaid, any party may be directed to summon the persons whose attendance is required, and to conduct any proceedings and carry out any directions which may be given. [E. 388.] C. O. 21, R. 242.

Local registrar's certificate

327. The directions to be given for or touching any proceedings before the local registrar, for making inquiries or taking accounts, shall require no particular form; but the result of such proceedings shall be stated in the shape of a concise certificate to the judge. It shall not be necessary for the judge to sign such certificate; and, unless an order to discharge or vary the same is made, the certificate shall be deemed to be approved and adopted by the judge. [E. 827.]

Documents not to be set out in certificate

328. The certificate of the local registrar shall not, unless the circumstances of the case render it necessary, set out the judgment or order or any documents or evidence or reasons; but shall refer to the judgment, or order, documents, and evidence or particular paragraphs thereof, so that it may appear upon what the result stated in the certificate is founded. [E. 828.]

Settlement of certificate

329. The certificate shall, when the judge shall so direct, be prepared by the solicitor of one of the parties, who shall obtain an appointment to settle the certificate, and shall give notice of such appointment to the other parties. [R. S. C. December, 1885.]

Form of certificate

330. The certificate of the local registrar shall be in the form No. 20 in the appendix, with such variations as the circumstances may require; and, when prepared and settled, shall be transcribed in such form, and within such time as the local registrar shall require, and shall be signed by the local registrar either then, or (if necessary), at an adjournment to be made for the purpose. [E. 829.]

Certifying accounts

331. Where an account is directed, the certificate shall state the result of such account, and not set the same out by way of schedule, but shall refer to the account verified by the affidavit filed, and shall specify by the numbers attached to the items in the account which, if any, of such items have been disallowed or varied, and shall state what additions, if any, have been made by way of surcharge or otherwise; and, where the account verified by the affidavit has been so altered that it is necessary to have a fair transcript of the account as altered, such transcript may be required to be made by the party prosecuting the judgment or order, and shall then be referred to by the certificate. The accounts and the transcripts (if any) referred to by certificates shall be filed therewith. No copy of any such account shall be required to be taken by any party. [E. 830.]

Taking the opinion of the judge

332. Any party may, before the proceedings before the local registrar are concluded, take the opinion of the judge upon any matter arising in the course of the proceedings. [E. 831.]

Filing certificate, motion to vary

333. Every certificate, with the accounts (if any) shall be filed by the local registrar, and shall thenceforth be binding on all the parties to the proceedings, unless discharged or varied, upon application to a judge by motion to be made before the expiration of eight clear days after the filing of the certificate. [E. 832.]

Application to vary after certificate binding

334. The judge may, if the special circumstances of the case require it, upon an application by motion for the purpose, direct a certificate to be discharged or varied at any time after the same has become binding on the parties. [E. 833.]

Inquiry and Reference as to Damages.

Ascertainment of damages

335. In every action or proceeding in which it shall appear to the court or a judge that the amount of damages sought to be recovered is substantially a matter of calculation, the court or a judge may either fix the amount or direct that the amount for which final judgment is to be entered shall be ascertained by an officer of the court or other person; and the attendance of witnesses and the production of documents before such officer or other person may be compelled by subpœna, and such officer or other person may adjourn the inquiry from time to time, and shall indorse upon the order for referring the amount of damages to him, the amount found by him, and shall deliver the order with such indorsement to the local registrar and such and the like proceedings may thereupon be had as to taxation of costs, entering judgment, and otherwise, as in ordinary cases. [E. 481.] C. O. 21, R. 243.

Where continuing cause of action

336. Where damages are to be assessed in respect of any continuing cause of action, they shall be assessed down to the time of assessment. [E. 482.] C. O. 21, R. 244.

SUMMARY INQUIRIES INTO FRAUDULENT TRANSFERS.

Originating summons

Inquiry into alleged fraudulent conveyances

337. Where a judgment creditor or a person entitled to money under a judgment or order alleges that the debtor or person who is to pay has made a conveyance of his property whether real or personal which is void as being made to delay, hinder or defraud creditors or a creditor, an originating summons may be issued by the judgment creditor calling upon the judgment debtor or person who is to pay or who has acquired any interest thereunder to show cause why the property embraced in such conveyance or a competent part thereof should not be sold to realise the amount to be levied under the execution. [R. S. O. 1877, c. 49, s. 10.] C. O. 21, R. 245.

For equitable execution

338. Where any judgment creditor in an action or a person entitled under a judgment or order as aforesaid alleges that the debtor or person who is to pay, is entitled to, or has an interest in any property which under the former practice

could not be sold under legal process, but could be rendered available in an action for equitable execution by sale for satisfaction of the debt, an originating summons may be issued by the creditor calling upon the debtor or person who is to pay, and the trustee or other person having the legal estate in the property, or the interest therein of the debtor, or the person who is to pay, to show cause why the property or a competent part of the said property should not be sold to realise the amount to be levied under the execution. [R. S. O. 1877, c. 49, s. 11.] C. O. 21, R. 246.

Issue or inquiry

339. Upon any application under either of the two preceding rules, such proceedings shall be had, either in a summary way or by the trial of an issue, or by inquiry before an officer of the court or otherwise as the court or a judge may deem necessary or convenient for the purpose of ascertaining the truth of the matters in question, and whether the property or the debtor's or other person's interest therein is liable for the satisfaction of the execution. [R. S. O. 1877, c. 49, s. 12.] C. O. 21, R. 247.

Order for sale

340. Where in a summary way, or upon the trial of an issue or as the result of any inquiries under the three preceding rules, any property or the interest of any debtor or other person therein is found liable to be sold, an order shall be made by the court or judge declaring what property or what interest therein is liable to be sold and directing the sale thereof according to the usual practice. [R. S. O. 1877, c. 49, s. 14.] C. O. 21, R. 248.

Interim injunction or receiver

341. Pending any such issue or inquiry an interim injunction order may be issued, or a receiver appointed to prevent the transfer or other disposition of the property. C. O. 21, R. 249.

ORDER XXVI.

SPECIAL CASE.

Parties may state special case

342. The parties to any cause or matter may concur in stating the questions of law arising therein, in the form of a special case for the opinion of the court. Every such special case shall be divided into paragraphs numbered consecutively, and shall concisely state such facts and documents, as may be necessary, to enable the court to decide the question raised thereby. Upon the argument of such case the court and the parties shall be at liberty to refer to the whole contents of such documents; and the court shall be at liberty to draw from the facts and documents stated in any special case any inference, whether of fact or law, which might have been drawn therefrom if proved at a trial. [E. 389.] C. O. 21, R. 250.

Special case or question of law raised by order before trial

343. If it appear to the court or a judge that there is in any cause or matter a question of law, which it would be convenient to have decided before any evidence is given, or any question or issue of fact is tried, or before any reference is made to a referee, the court or judge may make an order accordingly, and may direct such question of law to be raised for the opinion of the court, either by special case or in such other manner as the court or judge may deem expedient; and all such further proceedings, as the decision of such question of law may render unnecessary, may thereupon be stayed. [E. 390.] C. O. 21, R. 251.

Signing and filing special case

344. Every special case shall be prepared by the plaintiff, and signed by the several parties or their counsel or solicitors, and shall be filed by the plaintiff. [E. 391.]

Special case where person under disability is party

345. No special case in any cause or matter, to which an infant or person of unsound mind not so found by inquisition is a party, shall be set down for argument, without leave of the court or a judge, the application for which must be supported by sufficient evidence that the statements contained in such special case, so far as the same affect the interest of such infant or person of unsound mind are true. [E. 392.] C. O. 21, R. 252.

Form of entry

346. Either party may enter a special case for argument, by delivering to the proper officer, a memorandum of entry, in form No. 21 in the appendix, and also if any infant or person of unsound mind, not so found by inquisition, be a party to the cause or matter producing a copy of the order giving leave to enter the same for argument. [E. 393.]

Agreement for payment of money according to result of special case

347. The parties to a special case may, if they think fit, enter into an agreement in writing that, on the judgment of the court being given in the affirmative or negative of the questions of law raised by the special case, a sum of money, fixed by the parties, or to be ascertained by the court, or in such manner as the court may direct, shall be paid by one of the parties to the other of them, either with or without costs of the cause or matter; and the judgment of the court may be entered for the sum so agreed or ascertained, with or without costs, as the case may be, and execution may issue upon such judgment forthwith, unless otherwise agreed or unless stayed on appeal. [E. 394.] C. O. 21, R. 253.

348. This order shall apply to every special case stated in a cause or matter, or in any proceeding incidental thereto. [E. 395.]

ORDER XXVII.

TRIAL.

Defendant not appearing

349. If, when a trial is called on, the plaintiff appears, and the defendant does not appear, the plaintiff may prove his claim, so far as the burden of proof lies upon him. [E. 455.] C. O. 21, R. 254.

Plaintiff not appearing

350. If, when a trial is called on, the defendant appears, and the plaintiff does not appear, the defendant, if he has no counterclaim, shall be entitled to judgment dismissing the action; but, if he has a counterclaim, then he may prove such counterclaim so far as the burden of proof lies upon him. [E. 456.] C. O. 21, R. 255.

Judgment by default

Setting aside

351. Any verdict or judgment obtained, where one party does not appear at the trial, may be set aside by the court or a judge upon such terms as may seem fit, upon an application made within fifteen days after the trial. [E. 457.] C. O. 21, R. 256.

Witnesses may be excluded

352. The judge at the trial shall, at the request of either party, order a witness to be excluded from the court until he is called to give evidence; and also, if the judge deems it expedient, a party intending to give evidence; or he may require such party to be examined before the other witnesses on his behalf. Any such witness or party who does not conform to such order shall be liable to be punished, as to the judge may seem just, and the judge may, in his discretion, exclude the testimony of any witness or party who does not conform to such order. [Ont. 547.]

Postponement or adjournment of trial

353. The judge may, if he thinks it expedient for the interests of justice, postpone or adjourn a trial for such time, and to such place, and upon such terms, if any, as he shall think fit; but no trial shall be postponed upon the ground of the absence of a material witness, unless the affidavit upon which the application is made distinctly states that the deponent believes, and is advised, that the party on whose behalf the application is made has a just cause of action or defence upon the merits, and that the application is not made solely for delay. [E. 458.] C. O. 21, R. 257.

Accidental omission to prove material fact

354. Where, through accident or mistake or other cause, any party omits or fails to prove some fact material to his case, the judge may proceed with the trial subject to such fact

being afterwards proved, at such time and subject to such terms and conditions as to costs and otherwise as the judge shall direct; and, if the case is being tried by a jury, the judge may direct the jury to find a verdict as if such fact had been proved, and the verdict shall take effect on such fact being afterwards proved as directed; and, if not so proved, judgment shall be entered for the opposite party, unless the court or judge otherwise directs. This rule shall not apply to action for libel or slander. [O. 549.]

355. In actions for libel or slander, in which the defendant does not by his defence assert the truth of the statement complained of, the defendant shall not be entitled on the trial to give evidence in chief, with a view to mitigation of damages, as to the circumstances under which the libel or slander was published, or as to the character of the plaintiff, without the leave of the judge, unless seven days at least before the trial, he furnishes particulars to the plaintiff of the matters as to which he intends to give evidence. [E. 461.]

Speeches to jury

356. Upon a trial with a jury, the addresses to the jury shall be regulated as follows: The party who begins, or his counsel, shall be allowed at the close of his case, if his opponent does not announce any intention to adduce evidence, to address the jury a second time for the purpose of summing up the evidence, and the opposite party; or his counsel shall have the right to address the jury in reply. If both parties adduce evidence, the party who begins, or his counsel, shall have the right to address the jury, after the other party or his counsel has addressed the jury. [E. 460.] C. O. 21, R. 259.

Cross examination

Vexatious or irrelevant questions

357. The judge may, in all cases, disallow any questions put in cross examination of any party or other witness which may appear to him to be vexatious, and not relevant to any matter proper to be inquired into in the cause or matter. [E. 462.] C. O. 21, R. 260.

Delivery of judgment

358. The judge shall, at or after trial, direct judgment to be entered as he shall think right, and no motion for judgment shall be necessary in order to obtain such judgment. [E. 463.] C. O. 21, R. 261.

359. Exhibits put in at the trial shall be numbered and marked according to form No. 22 in the appendix. [O. 555.] Regulation (6) O. 557.

ORDER XXVIII.

EVIDENCE, ETC.

I.—*Evidence Generally.*

Evidence may be taken by examiner

360. In any action the judge may direct the evidence, either wholly or in part, to be taken by any local registrar of the court or by any other competent person; which local registrar or any other person shall be sworn to take the same truly, and to reduce it to writing, and on the return of the evidence the judge may give judgment upon the evidence taken by the local registrar or other person as aforesaid, or may order the action to be tried in the ordinary way when justice seems to require the same. C. O. 21, R. 262.

Judgment thereon or new trial

Witnesses to be examined viva voce unless otherwise agreed or ordered

361. In the absence of any agreement in writing between the parties or their solicitors, and subject to the provisions of these rules, the witnesses at the trial of any action, or at any assessment of damages, shall be examined *viva voce* and in open court; but the court or a judge may, at any time, for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing or trial, on such conditions as the court or judge may think reasonable, or that any witness whose attendance in court ought, for some sufficient cause, to be dispensed with, be examined by interrogatories or otherwise before a commissioner or examiner:

Provided that, where it appears to the court or judge that the other party *bona fide* desires the production of a witness for cross examination, and that such witness can be produced, an order shall not be made authorising the evidence of such witness to be given by affidavit. [E. 483.] C. O. 21, R. 263.

Reading evidence taken in other causes

362. An order to read evidence taken in another cause or matter shall not be necessary; but such evidence may, saving all just exceptions, be read on *ex parte* applications by leave of the court or a judge, to be obtained at the time of making any such application, and in any other case upon the party desiring to use such evidence, giving two days' previous notice to the other parties of his intention to read such evidence. [E. 485.] C. O. 21, R. 264.

Office copies admissible in evidence

363. Copies of all writs, records, pleadings and documents filed in court, when certified by the local registrar, shall be admissible in evidence in all causes and matters and between all persons or parties, to the same extent as the original would be admissible. [E. 486.] C. O. 21, R. 265.

364*a*. No registrar of land titles or registration clerk shall produce or shall be compelled to produce any book, document, plan or record registered, filed, received or kept in his office except by leave of the attorney general. (266*a*.)

364. Impounded documents, while in the custody of the court, are not to be parted with, and are not to be inspected, except on a written order signed by the judge on whose order they were impounded; or, in case of documents, impounded on the order of the court *en banc* by an order of that court. Such documents shall not be delivered out of the custody of the court, except on an order made on motion in open court. [E. 611*a*.] C. O. 21, R. 266. Impounded documents

II.—*Examination of Witnesses.*

365. The court or a judge may, in any cause or matter where it shall appear necessary for the purposes of justice, make any order for the examination upon oath before the court or judge, or any officer of the court, or any other person and at any place of any witness or person, and may empower any party to any such cause or matter to give such deposition in evidence therein on such terms, if any, as the court or a judge may direct. [E. 487.] C. O. 21, R. 267. Order for examination of witness

366. An order for a commission to examine witnesses shall be in the form No. 23 in the appendix, with such variations as circumstances may require. [E. 488.]

367. The court or a judge may, in any cause or matter at any stage of the proceedings, order the attendance of any person for the purpose of producing any writings or other documents named in the order, which the court or judge may think fit to be produced: Order for production of documents

Provided that no person shall be compelled to produce under any such order any writing or other document which he could not be compelled to produce at the hearing or trial. [E. 489.] C. O. 21, R. 268.

368. Any person wilfully disobeying any order requiring his attendance for the purpose of being examined or of producing any document shall be deemed guilty of contempt of court, and may be dealt with accordingly. [E. 490.] C. O. 21, R. 269. Disobedience to order

369. Any person required to attend for the purpose of being examined or of producing any document, shall be entitled to the like conduct money and payment for expenses and loss of time as upon attendance at a trial in court. [E. 491.] C. O. 21, R. 270. Conduct money

370. Where any witness or person is ordered to be examined before any officer of the court, or before any person appointed for the purpose, the person taking the examination shall be furnished by the party on whose application the order Copy of proceedings to be furnished examiner

was made with a copy of the pleadings in the cause, or with a copy of the documents necessary to inform the person taking the examination of the questions at issue between the parties. [E. 492.] C. O. 21, R. 271.

Conduct of examination

371. The examination shall take place in the presence of the parties, their counsel, solicitors or agents and the witnesses shall be subject to cross examination and re-examination. [E. 493.] C. O. 21, R. 272.

Depositions, mode of taking

372. The depositions taken before an officer of the court, or before any other person appointed to take the examination, shall be taken down in writing by or in the presence of the examiner, not ordinarily by question and answer, but so as to represent as nearly as may be the statement of the witness, and when completed shall be read over to the witness and signed by him in the presence of the parties, or such of them as may think fit to attend. If the witness shall refuse to sign the depositions the examiner shall sign the same. The examiner may put down any particular question or answer if there should appear any special reason for doing so, and may put any question to the witness as to the meaning of any answer, or as to any matter arising in the course of the examination. Any questions which may be objected to shall be taken down by the examiner in the depositions, and he shall state his opinion thereon to the counsel, solicitors or parties, and shall refer to such statement in the depositions, but he shall not have power to decide upon the materiality or relevancy of any question. [E. 494.] C. O. 21, R. 273.

Reading and signatures

Questions and answers

Objections

Disobedience of witness

373. If any person duly summoned by subpoena to attend for examination shall refuse to attend, or if, having attended, he shall refuse to be sworn or to answer any lawful question, a certificate of such refusal, signed by the examiner, shall be filed in court, and thereupon the party requiring the attendance of the witness may apply to the court or a judge *ex parte* or on notice for an order directing the witness to attend, or to be sworn, or to answer any question, as the case may be. [E. 495.] C. O. 21, R. 274.

Objections by witness

374. If any witness shall object to any questions which may be put to him before an examiner, the question so put, and the objection of the witness thereto, shall be taken down by the examiner and transmitted by him to the court to be there filed, and the validity of the objection shall be decided by the court or a judge. [E. 496.] C. O. 21, R. 275.

Witness disobeying subpoena

375. If it shall be made to appear to the court or a judge that a witness has been duly served with a subpœna, and his fees for travel and attendance paid or tendered to him, and

that such witness refuses or neglects to attend to give evidence, as required by his subpœna, and that his evidence is necessary and material, it shall be lawful for the judge, in addition to any powers which he may possess for the punishment of such witness, to issue a warrant under his hand and seal, directed to any sheriff or other officer or officers, for the immediate arrest of such witness, to be brought before the court, or person authorised to hear the evidence for the purpose of giving evidence in the cause. C. O. 21, R. 276. Warrant for arrest

376. In any case under the three last preceding rules, the court or a judge shall have power to order the witness to pay any costs occasioned by his refusal or objection. [E. 497.] C. O. 21, R. 277. Costs against disobedient witness

377. When the examination of any witness before any examiner shall have been concluded, the original depositions, authenticated by the signature of the examiner, shall be transmitted by him to the local registrar and by him shall be filed. [E. 498.] C. O. 21, R. 278. Return of depositions

378. The person taking the examination of a witness under these rules may, and if need be shall, make a special report to the court touching such examination, and the conduct or absence of any witness or other person thereon, and the court or a judge may direct such proceedings and make such order as upon the report they or he may think just. [E. 499.] C. O. 21, R. 279. Special report by examiner

379. Except where by this order otherwise provided, or directed by the court or a judge, no deposition shall be given in evidence at the hearing or trial of the cause or matter without the consent of the party against whom the same may be offered, unless the court or judge is satisfied that the deponent is dead, or beyond the jurisdiction of the court, or unable from sickness or other infirmity to attend the hearing or trial, in any of which cases the depositions certified under the hand of the person taking the examination shall be admissible in evidence saving all just exceptions without proof of the signature to such certificate. [E. 500.] C. O. 21, R. 280. Depositions, use of in evidence

380. Any officer of the court, or other person directed to take the examination of any witness or person, may administer oaths. [E. 501.] C. O. 21, R. 284. Oaths

381. Any party in any cause or matter may by *subpœna ad testificandum* or *duces tecum* require the attendance of any witness before an officer of the court, or other person appointed to take the examination, for the purpose of using his evidence upon any proceeding in the cause or matter in the like manner Examination for use in proceedings in cause

Cross examination on affidavit

as such witness should be bound to attend and be examined at the hearing or trial; and any party or witness having made an affidavit to be used or which shall be used on any proceeding in the cause or matter shall be bound on being served with such subpœna to attend before such officer or person for cross examination. [E. 502.] C. O. 21, R. 282.

Evidence taken after trial

382. Evidence taken subsequently to the hearing or trial of any cause or matter shall be taken as nearly as may be in the same manner as evidence taken at or with a view to a trial. [E. 503.] C. O. 21, R. 283.

Practice on taking evidence

383. The practice with reference to the examination, cross examination, and re-examination of witnesses at a trial shall extend and be applicable to evidence taken in any cause or matter at any stage. [E. 504.] C. O. 21, R. 284.

Special directions as to taking evidence

384. The practice of the court with respect to evidence at a trial, when applied to evidence to be taken before an officer of the court or other person in any cause or matter after the hearing or trial, shall be subject to any special directions which may be given in any case. [E. 505.] C. O. 21, R. 285.

Notice to use affidavit or depositions at trial

385. No affidavit or deposition filed or made before issue joined in any cause or matter shall without special leave of the court or a judge be received at the hearing or trial thereof, unless within one month after issue joined or within such longer time as may be allowed by special leave of the court or a judge, notice in writing shall have been given by the party intending to use the same to the opposite party of his intention in that behalf. [E. 506.] C. O. 21, R. 286.

Evidence at trial, subsequent use of

386. All evidence taken at the hearing or trial of any cause or matter may be used in any subsequent proceedings in the cause or matter. [E. 507.] C. O. 21, R. 287.

387. Any copy of the evidence, or any portion thereof certified by an official shorthand reporter taking the same, or by the local registrar with whom the same has been filed shall, for all purposes, have the same effect as the original evidence. 1903, sess. 1, c. 8, s. 1.

III.—*Subpœna.*

388. Where it is intended to sue out a subpœna, a præcipe for that purpose, in the form No. 24 in the appendix and containing the name or firm and the place of business or residence of the solicitor intending to sue out the same; and,

where such solicitor is agent only, then also the name or firm and place of business or residence of the principal solicitor shall, in all cases, be delivered and filed with the local registrar. [E. 508.]

389. A writ of subpœna shall be in one of the forms 25 to 27 in the appendix, with such variations as circumstances may require. [E. 509.]

Subpœna for witness in chambers

390. When a subpœna is required for the attendance of a witness for the purpose of proceedings in chambers, such subpœna shall issue from the local registrar's office upon a note from the judge. [E. 510.] C. O. 21, R. 288.

Number of names in subpœna

391. Every subpœna, other than a *subpœna duces tecum,* shall contain three names where necessary or required, but may contain any larger number of names. [E. 511.]

Subpœna duces tecum

392. No more than three persons shall be included in one *subpœna duces tecum,* and the party suing out the same shall be at liberty to sue out a subpœna for each person if it shall be deemed necessary or desirable. [E. 512.]

Correction of errors in names

393. In the interval between the suing out and service of any subpœna, the party suing out the same may correct any error in the names of parties or witnesses, and may have the writ resealed upon leaving a corrected præcipe of such subpœna, marked with the words "altered and resealed," and signed with the name and address of the solicitor suing out the same. [E. 513.]

Service of subpœna

394. The service of a subpœna shall be effected by delivering a copy of the writ, and of the indorsement thereon, and at the same time producing the original writ. [E. 514.] C. O. 21, R. 289.

Affidavits of service

395. Affidavits filed for the purpose of proving the service of a subpœna upon any defendant must state when, where, and how, and by whom, such service was effected. [E. 515.]

Time for service

396. The service of any subpœna shall be of no validity if not made within twelve weeks after the teste of the writ. [E. 516.]

How long to remain in force

397. Every subpœna shall remain in force from the date of issue, until the trial of the action or matter in which it is issued. [E. O. 37, R. 34*a*.]

IV.—*Perpetuating Testimony.*

Action to perpetuate testimony

398. Any person who would, under the circumstances, alleged by him to exist become entitled, upon the happening of any future event, to any office, or to any estate or interest in any property, real or personal, the right or claim to which cannot by him be brought to trial before the happening of such event, may commence an action to perpetuate any testimony which may be material for establishing such right or claim. [E. 517.] C. O. 21, R. 290.

Witnesses

399. Witnesses shall not be examined to perpetuate testimony unless an action has been commenced for the purpose. [E. 519.] C. O. 21, R. 291.

Trial

400. No action to perpetuate the testimony of witnesses shall be set down for trial. [E. 520.] C. O. 21, R. 292.

ORDER XXIX.

OBTAINING EVIDENCE FOR FOREIGN TRIBUNALS.

Court or judge may make ex parte order to carry into effect Commission Rogatoire

401. Where, under *The Foreign Tribunals Evidence Act 1856* (Imperial), or *The Extradition Act 1870* (Imperial), section 24, any civil or commercial matter or any criminal matter is pending before a court or tribunal of a foreign country, and it is made to appear to the court or a judge, by commission *rogatoire* or letter of request, or other evidence as hereinafter provided, that such court or tribunal is desirous of obtaining the testimony in relation to such matter of any witness or witnesses within the jurisdiction, the court or a judge may, on the *ex parte* application of any person, shown to be duly authorised to make the application on behalf of such foreign court or tribunal, and on production of the commission *rogatoire* or letter of request, or of a certificate signed in the manner, and certifying to the effect mentioned in section 2 of *The Foreign Tribunals Evidence Act 1856* (Imperial), or such other evidence as the court or a judge may require, make such order or orders as may be necessary to give effect to the intention of the Acts above mentioned, in conformity with section 1 of the said *Foreign Tribunals Evidence Act 1856*.

Form of order

402. An order made under the last preceding rule shall be in form No. 28 in the appendix with such variations as circumstances may require.

403. The examination may be ordered to be taken before any fit and proper person nominated by the person applying, or before the local registrar or such other qualified person as to the court or a judge may seem fit. Examination may be before any proper person

404. Unless otherwise provided in the order for examination, the examiner before whom the examination is taken shall, on its completion, forward the same to the registrar of the supreme court, and on receipt thereof the registrar shall append thereto a certificate in form No. 29 in the appendix, with such variations as circumstances may require, duly sealed with the seal of the supreme court and shall forward the depositions, so certified, and the commission *rogatoire* or letter of request, if any, to his Majesty's Secretary of State for Canada, for transmission to the foreign court or tribunal requiring the same. Examination when completed to be forwarded to registrar

405. An order made under rule 401 of this order may, if the court or a judge shall think fit, direct the said examination to be taken in such manner as may be requested by the commission *rogatoire* or letter of request from the foreign court, and therein signified to be in accordance with the practice or requirements of such court or tribunal, or which may, for the same reason, be requested by the applicant for such order. But, in the absence of any such special directions being given in the order for examination, the same shall be taken in the manner prescribed for examinations for use in the supreme court. Order, what to contain

406. Rules 401 to 405 of this order shall apply as far as may be, to applications under *The Evidence by Commission Act 1859* (Imperial), (22 Vict., c. 20) for the purpose of giving effect to any commission or letter of request from any British tribunal out of the jurisdiction. Rules to apply to commission from British tribunal

407. Where a commission *rogatoire* or letter of request, as mentioned in rule 401, is transmitted to the supreme court by his Majesty's Secretary of State for Canada, with an intimation that it is desirable that effect should be given to the same, without requiring an application to be made to the court by the agents in Saskatchewan of any of the parties to the action or matter in the foreign country, the registrar shall transmit the same to the deputy of the attorney general, who may thereupon, with the consent of the attorney general, make such application and take such steps as may be necessary, to give effect to such commission *rogatoire* or letter of request in accordance with rules 401 to 405 of this order. Deputy attorney general to make application in certain cases

ORDER XXX.

AFFIDAVITS AND DEPOSITIONS.

Evidence on motions, etc.

Cross examination

408. Upon any motion, petition, or summons, evidence may be given by affidavit; but the court or a judge may, on the application of either party, order the attendance for cross examination of the persons making any such affidavit. [E. 521.] C. O. 21, R. 293.

Intituling affidavits

409. Every affidavit shall be intituled in the cause or matter in which it is sworn; but in every case in which there is more than one plaintiff or defendant, it shall be sufficient to state the full name of the first plaintiff or defendant respectively, and that there are other plaintiffs or defendants, as the case may be; and the costs occasioned by any unnecessary prolixity in any such title shall be disallowed. [E. 522.] C. O. 21, R. 294.

Affidavits confined to facts

Statements of belief

410. Affidavits shall be confined to such facts as the witness is able of his own knowledge to prove, except on interlocutory motions, on which statements as to his belief, with the grounds thereof, may be admitted. The costs of every affidavit which shall unnecessarily set forth matters of hearsay, or argumentative matter, or copies of or extracts from documents, shall be paid by the party filing the same. [E. 523.] C. O. 21, R. 295.

Officers for oaths

411. Affidavits sworn in Saskatchewan shall be sworn before a judge, local registrar, or deputy local registrar, notary public, justice of the peace or commissioner empowered to administer oaths. [E. 524.] C. O. 21, R. 296.

Jurat: time and place of oath

412. Every person administering oaths shall express the time when, and the place where, he shall take any affidavit or recognisance; otherwise the same shall not be held authentic, nor be admitted to be filed without the leave of the court or a judge. [E. 525.] C. O. 21, R. 297.

Officers for oaths out of Saskatchewan

413. All examinations, affidavits, declarations, affirmations, and attestations in causes or matters depending in the supreme court, may be sworn and taken out of Saskatchewan in any part of the Dominion of Canada or in Great Britain or Ireland, or the Channel Islands, or in any colony, island or plantation, or place under the dominion of his Majesty in foreign parts, before any judge, court, notary public or person lawfully authorised to administer oaths in such country, colony, island, plantation, or place respectively, or before any of his Majesty's consuls or vice consuls in any foreign part out of his Majesty's dominions, or before a judge of a court

of record, or a notary public under his hand and seal, or before a commissioner appointed for the purpose of taking affidavits outside of Saskatchewan to be used within Saskatchewan, or a commissioner duly appointed by the judge for such purpose; and the judges and other officers of the supreme court shall take judicial notice of the seal or signature, as the case may be, of any such court, judge, notary public, person, consul or vice consul attached, appended or subscribed to any such examinations, affidavits, affirmations, attestations and declarations. [E. 526.] C. O. 21, R. 298.

Form of affidavits

414. Every affidavit shall be drawn up in the first person, and shall be divided into paragraphs, and every paragraph shall be numbered consecutively, and, as nearly as may be, shall be confined to a distinct portion of the subject. No costs shall be allowed for any affidavit or part of an affidavit substantially departing from this rule. [E. 527.] C. O. 21, R. 299.

Description of deponent Signature

415. Every affidavit shall state the description and true place of abode of the deponent and shall be signed by him. [E. 528.] C. O. 21, R. 300.

Affidavits by several deponents

416. In every affidavit made by two or more deponents, the names of the several persons making the affidavit shall be inserted in the jurat; except that, if the affidavit of all the deponents is taken at one time by the same officer, it shall be sufficient to state that it was sworn by both (or all) of the "above named" deponents. [E. 529.] C. O. 21, R. 301

Affidavits, etc., to be filed

417. Every affidavit and exhibit used in a cause, matter or proceeding shall be filed before being used. There shall be indorsed on every affidavit a note showing on whose behalf it is filed, and no affidavit shall be filed or used without such note, unless the court or a judge shall otherwise direct. [E. 530.] C. O. 21, R. 302.

Affidavits to be filed before service of notice of motion

418. Affidavits upon which a notice of motion or petition is founded, shall be filed before the service of the notice of motion or petition. (Ont. 524.)

Chamber affidavits to be filed with chamber clerk

419. Affidavits to be used on a motion in chambers at Regina shall be filed with the chamber clerk who shall transmit them to the local registrar when the motion is disposed of. [Ont. 525.]

Scandalous matter

420. The court or a judge may order to be struck out from any affidavit any matter which is scandalous, and may order the costs of any application to strike out such matter to be paid as between solicitor and client. [E. 531.] C. O. 21, R. 303.

Alterations in affidavits

421. No affidavit having in the jurat or body thereof any interlineation, alteration, or erasure shall, without leave of the court or a judge, be read or made use of in any matter depending in court unless the interlineation or alteration (other than by erasure) is authenticated by the initials of the officer taking the affidavit; nor, in the case of an erasure, unless the words or figures appearing at the time of taking the affidavit to be written on the erasure are rewritten, and signed or initialed in the margin of the affidavit by the officer taking it. [E. 532.] C. O. 21, R. 304.

Affidavits by illiterate or blind person

422. Where an affidavit is sworn by any person, who appears to the officer taking the affidavit to be illiterate or blind, the officer shall certify in the jurat that the affidavit was read in his presence to the deponent, that the deponent seemed perfectly to understand it, and that deponent made his signature or mark in the presence of the officer. No such affidavit shall be used in evidence in the absence of this certificate, unless the court or a judge is otherwise satisfied that the affidavit was read over to, and appeared to be perfectly understood by, the deponent. [E. 533.] C. O. 21, R. 305.

Use of defective affidavits

423. The court or a judge may receive any affidavit sworn for the purpose of being used in any cause or matter, notwithstanding any defect by misdescription of parties or otherwise in the title or jurat, or any other irregularity in the form thereof, and may direct a memorandum to be made on the document that it has been so received. [E. 534.] C. O. 21, R. 306.

Office copies

424. In cases in which an original affidavit is used, it shall, before it is used, be stamped with a proper filing stamp, and shall at the time when it is used be delivered to and left with the proper officer in court or in chambers, who shall cause it to be filed. A copy of an affidavit may in all cases be used, the original affidavit having been previously filed, and the copy duly authenticated with the certificate of the local registrar under the seal of the court. [E. 535.] C. O. 21, R. 307.

Affidavit sworn before solicitor or agent

425. No affidavit shall be sufficient if sworn before the solicitor acting for the party on whose behalf the affidavit is to be used, or before any agent of such solicitor, or before the party himself. [E. 536.] C. O. 21, R. 308.

Or clerk or partner

426. Any affidavit which would be insufficient, if sworn before the solicitor himself, shall be insufficient if sworn before his clerk or partner. [E. 537.] C. O. 21, R. 309.

Time limited for filing

427. Where a special time is limited for filing affidavits, no affidavit filed after that time shall be used unless by leave

of the court or a judge. On motions founded on affidavits either party may, by leave of the court or judge, make affidavits in answer to the affidavits of the opposite party as to new matter arising out of such affidavits. [E. 538.] C. O. 21, R. 310. Affidavits in answer

428. Except by leave of the court or a judge no order made *ex parte* in court founded on any affidavit shall be of any force unless the affidavit on which the application was made was actually made before the order was applied for, and produced or filed at the time of making the motion. [E. 539.] C. O. 21, R. 311. Affidavits on ex parte motions

429. All affidavits which have been previously made and read in court upon any proceedings in a cause or matter may be used before the judge in chambers. [E. 541.] C. O. 21, R. 312. Use in chambers of affidavits used in court

430. Affidavits of service upon any party must state when, where and how and by whom such service was effected. [E. 1020.]. C. O. 21, R. 313. Affidavits of service

431. Every alteration in an account verified by affidavit shall be marked with the initials of the commissioner or officer before whom the affidavit is sworn, and such alteration shall not be made by erasure. [E. 542.] C. O. 21, R. 314. Alterations in verified accounts

432. Accounts, extracts and other documents referred to by affidavit, shall not be annexed to the affidavit, or referred to in the affidavit as annexed, but shall be referred to as exhibits. [E. 543.] C. O. 21, R. 315. Exhibits, reference to

433. Every certificate on an exhibit referred to in an affidavit signed by the commissioner or officer before whom the affidavit is sworn shall be marked with the short title of the cause or matter. [E. 544.] C. O. 21, R. 316. Certificate on exhibit

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ORDER XXXI.

MOTION FOR JUDGMENT.

434. Except where by these rules it is provided that the judgment may be obtained in any other manner, the judgment of the court shall be obtained by motion for judgment. [E. 559.] C. O. 21, R. 317. Judgment on motion

435. Where, at or after a trial with a jury, the judge has directed that any judgment be entered, any party may apply Judgment on findings of jury

Setting aside

to set aside such judgment and enter any other judgment, on the ground that the judgment directed to be entered is wrong by reason that the finding of the jury upon the questions submitted to them has not been properly entered. [E. 561.] C. O. 21, R. 318.

Setting aside judgment directed to be entered by judge

436. Where at or after a trial by a judge, either with or without a jury, the judge has directed that any judgment be entered, any party may apply to set aside such judgment and enter any other judgment, upon the ground that, upon the finding as entered, the judgment so directed is wrong. [E. 562.] C. O. 21, R. 319.

Application to court en banc

437. An application under the two next preceding rules shall be to the court *en banc*. [E. 563.] C. O. 21, R. 320.

Setting down motion for judgment after issues tried

438. When issues have been ordered to be tried, or issues or questions of fact to be determined in any manner, the plaintiff may set down a motion for judgment as soon as such issues or questions have been determined. If he does not set down such a motion, and give notice thereof to the other parties within ten days after his right so to do has arisen, then after the expiration of such ten days any defendant may set down a motion for judgment, and give notice thereof to the other parties. [E. 565.] C. O. 21, R. 321.

After trial of some of issues ordered

439. Where issues have been ordered to be tried, or issues or questions of fact to be determined in any manner, and some only of such issues or questions of fact have been tried or determined, any party who considers that the result of such trial or determination renders the trial or determination of the others of them unnecessary, or renders it desirable that the trial or determination thereof should be postponed, may

Motion for judgment

apply to the court or a judge for leave to set down a motion for judgment, without waiting for such trial or determination. And the court or judge may, if satisfied of the expediency thereof, give such leave, upon such terms, if any, as shall appear just, and may give any directions which may appear desirable as to postponing the trial of the other issues of fact. [E. 566.] C. O. 21, R. 322.

Motion to be set down within one year

440. No motion for judgment shall except by leave of the court or a judge, be set down after the expiration of one year from the time when the party seeking to set down the same first became entitled so to do. [E. 567.] C. O. 21, R. 323.

Motion for judgment or new trial

441. Upon a motion for judgment, or upon an application for a new trial, the court may draw all inferences of fact, not inconsistent with the finding of the jury, and if satisfied that

Inferences in fact, etc.

it has before it all the materials necessary for finally determin-

ing the questions in dispute, or any of them, or for awarding any relief sought, give judgment accordingly, or may, if it shall be of opinion that it has not sufficient materials before it to enable it to give judgment, direct the motion to stand over for further consideration, and direct such issues or questions to be tried or determined, and such accounts and inquiries to be taken and made, as it may think fit. [E. 568.] C. O. 21, R. 324.

Court or judge may direct any application to be turned into motion for judgment or hearing of cause

442. When it is made to appear to the court or a judge, on the hearing of any application which may be pending before the court or judge, that it will be conducive to the ends of justice to permit it, the court or judge may direct any application to be turned into a motion for judgment, or hearing of the cause or matter; and thereupon the court or judge may make such order, as to the time and manner of giving the evidence in the cause or matter, and with respect to the further prosecution thereof, as the circumstances of the case may require; and upon the hearing, it shall be discretionary with the court or judge to either pronounce a judgment, or make such order as the court or judge deems expedient. C. O. 21, R. 325.

Court or judge may permit service of notice of motion for judgment before appearance

443. Where at any time after the writ of summons has been issued, it is made to appear to the court or a judge on an *ex parte* application, that it will be conducive to the ends of justice to permit a notice of motion for a judgment to be forthwith served, the court or judge may order the same accordingly, and when such permission is granted the court or judge is to give directions as to the service of the notice of motion, and affidavits, as may be expedient. Upon the hearing of such motion the court or judge, instead of granting or refusing the application, may give such directions for the examination of either parties, or witnesses, or for the making of further inquiries, or with respect to the further prosecution of the suit, as the circumstances of the case may require, and upon such terms as to costs, as the court or judge thinks right. C. O. 21, R. 326.

ORDER XXXII.

JUDGMENT AND ENTRY OF JUDGMENT.

Recording orders, decrees and judgments

Certified copies evidence

444. Except where otherwise provided, every order, decree and judgment shall be entered by the proper officer at length in a book to be kept for such purpose, properly indexed; and a copy of such entry, certified by the proper officer under the seal of the court, shall be received for all purposes as of the same force and effect as such original order, decree or judg-

ment. The forms Nos. 30 to 53 in the appendix shall be used, with such variations as circumstances may require. [E. 569.] C. O. 21, R. 327.

Judgment to be entered as of date pronounced

445. Where any judgment is pronounced by the court or a judge in court, the entry of judgment shall be dated as of the day on which such judgment is pronounced, unless the court or judge shall otherwise order, and the judgment shall take effect from that date:

Provided that, by special leave of the court or judge, a judgment may be antedated or postdated. [E. 571.] C. O. 21, R. 328.

Date of entry in other cases

446. In all cases not within the last preceding rule, the entry of judgment shall be dated as of the day on which the requisite documents are left with the proper officer for the purpose of such entry, and the judgment shall take effect from that date. [E. 572.] C. O. 21, R. 329.

Time to be stated for doing any act ordered to be done

447. Every judgment or order made in any cause or matter requiring any person to do an act thereby ordered shall state the time, or the time after service of the judgment or order, within which the act is to be done; and upon the copy of the judgment or order, which shall be served upon the person required to obey the same, there shall be indorsed a memorandum in the words or to the effect following, namely:

Memorandum to be indorsed

"If you, the within named *A. B.*, neglect to obey this judgment (*or* order) by the time therein limited, you will be liable to process of execution for the purpose of compelling you to obey the same judgment (*or* order)." [E. 573.] C. O. 21, R. 330.

Entry of judgment on production of affidavit or document

448. Where under these rules, or otherwise, it is provided that any judgment may be entered upon the filing of any affidavit, or production of any document, the officer shall examine the affidavit or document produced; and, if the same be regular and contain all that is by law required, he shall enter judgment accordingly. [E. 574.] C. O. 21, R. 331.

Entry on production of order or certificate

449. Where by these rules, or otherwise, any judgment may be entered pursuant to any order or certificate, or return to any writ, the production of such order or certificate, sealed with the seal of the court or of such return, shall be a sufficient authority to the officer to enter judgment accordingly. [E. 575.] C. O. 21, R. 332.

450. Where a reference is made to ascertain the amount for which final judgment is to be entered, the certificate thereof shall be filed when judgment is entered. [E. 576.]

451. In any cause or matter where the defendant has appeared by solicitor, no order for entering judgment shall be made by consent, unless the consent of the defendant is given by his solicitor or agent. [E. 577.] C. O. 21, R. 333. Consent judgment

452. Where the defendant has not appeared, or has appeared in person, no such order shall be made unless the defendant attends before a judge and gives his consent in person, or unless his written consent is attested by a solicitor acting on his behalf except in cases where the defendant is a solicitor. [E. 578.] C. O. 21, R. 334. Consent judgment; Defendant in person

453. Satisfaction of a judgment shall be signed by the plaintiff or his personal representatives or by a solicitor specially authorised for that purpose in writing, unless a judge on special circumstances set forth by affidavit dispense with such authorisation. C. O. 21, R. 335. Satisfaction of judgment

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ORDER XXXIII.

EXECUTION.

I.—*Execution Generally.*

454. Where any person is by any judgment or order directed to pay any money, or deliver up or transfer any property real or personal to another, it shall not be necessary to make any demand thereof, but the person so directed shall be bound to obey such judgment or order upon being duly served with the same without demand. [E. 579.] C. O. 21, R. 336. Judgment or order to be obeyed without demand

455. Where any person who has obtained any judgment or order upon condition, does not perform or comply with such condition, he shall be considered to have waived or abandoned such judgment or order so far as the same is beneficial to himself, and any other person interested in the matter may on breach or nonperformance of the condition take either such proceedings as the judgment or order may in such case warrant, or such proceedings as might have been taken if no such judgment or order had been made, unless the court or a judge shall otherwise direct. [E. 580.] C. O. 21, R. 337. Conditional judgment; Breach or nonperformance of condition

456. Every person to whom any sum of money or any costs shall be payable under a judgment or order shall so soon as the money or costs shall be payable, be entitled to sue out one or more writ or writs of *fieri facias* to enforce payment thereof, subject nevertheless as follows: Execution to enforce payment of money

Where time allowed by judgment

(*a*) If the judgment or order is for payment within a period therein mentioned, no such writ as aforesaid shall be issued until after the expiration of such period;

Stay of execution

(*b*) The court or a judge may, at or after the time of giving judgment, or making an order, stay execution until such time as they or he shall think fit. [E. 595.] C. O. 21, R. 338.

Recovery of land

457. A judgment for the recovery, or for the delivery of the possession of land may be enforced by writ of possession. [E. 583.] C. O. 21, R. 339.

Recovery of other property

458. A judgment for the recovery of any property, other than land or money, may be enforced by writ for delivery of the property. [E. 584.] C. O. 21, R. 340.

Judgment to do or abstain from any act

459. A judgment requiring any person to do any act, other than the payment of money, or to abstain from doing anything may be enforced by writ of attachment, or by committal. [E. 585.] C. O. 21, R. 341.

460. In these rules the term "writ of execution" shall include writs of *fieri facias,* and all subsequent writs that may issue for giving effect thereto; and the term "issuing execution against any party" shall mean the issuing of any such process against his property, as under the preceding rules of this order shall be applicable to the case. [E. 586.]

Judgment on condition

461. Where a judgment or order is to the effect that any party is entitled to any relief, subject to or upon the fulfilment of any condition or contingency, the party so entitled may, upon the fulfilment of the condition or contingency, and demand made upon the party against whom he is entitled to relief, apply to the court or a judge for leave to issue execution against such party. And the court or judge may, if satisfied that the right to relief has arisen according to the terms of the judgment or order, order that execution issue accordingly, or may direct that any issue or question necessary for the determination of the rights of the parties be tried in any of the ways in which questions arising in any action may be tried. [E. 587.] C. O. 21, R. 342.

Execution of

Execution in case of judgment against firms

462. Where a judgment or order is against a firm, execution may issue:

(*a*) Against any property of the partnership within the jurisdiction;

(*b*) Against the property of any person who has appeared in his own name, or who has admitted on the pleadings that he is, or who has been, adjudged to be a partner;

(*c*) Against the property of any person who has been individually served, as a partner, with the writ of summons, and has failed to appear. [E. 648*h*.]

Application for leave to issue against members of firm

463. If the party who has obtained judgment or an order claims to be entitled to issue execution against any other person as being a member of the firm, he may apply to the court or a judge for leave so to do; and the court or judge may give such leave if the liability be not disputed, or if such liability be disputed may order that the liability of such person be tried and determined in any manner in which any issue or question in an action may be tried and determined. But, except as against any property of the partnership, a judgment against a firm shall not render liable, release, or otherwise affect any member thereof who was out of the jurisdiction when the writ was issued, unless he has been made a party to the action, or has been served within the jurisdiction after the writ in the action was issued. [E. 648*h*.] C. O. 21, R. 343.

Judgment not to affect partner out of jurisdiction

Praecipe for execution

464. No writ of execution shall be issued without the party issuing it, or his solicitor filing a præcipe for that purpose. The præcipe shall contain the title of the action, the reference to the record, the date of the judgment, and of the order, if any, directing the execution to be issued, the names of the parties against whom or of the firm against whose goods the execution is to be issued; and shall be signed by or on behalf of the solicitor of the party issuing it, or by the party issuing it, if he does so in person. The forms Nos. 54 to 59 in the appendix shall be used, with such variations as circumstances may require. [E. 590.] C. O. 21, R. 344.

Execution to any judicial district

465. When entitled thereto, the party in whose favour such judgment has been entered may have one or more writs of execution directed to the sheriff of any one of the judicial districts, for levying within the judicial district named in such writ, the amount due on such judgment, and legal interest thereon and costs subsequent to such judgment, by distress and sale of the goods and chattels, and personal property liable to seizure and sale for debt, of the party against whom the said judgment has been so entered. C. O. 21, R. 345.

Date of execution
Duration

466. Every writ of execution shall bear date the day of its issue, and shall remain in force for two years from its date (and no longer, if unexecuted, unless renewed), but such

Renewal

writ may at any time before its expiration, and so from time to time during the continuance of the renewed writ, be renewed by the party issuing it for two years from the date of such renewal, by being marked in the margin with a memorandum to the effect following: "Renewed for two years from the day of , A.D., 19 ," (signed by the local registrar); and the production of a writ of execution marked as renewed in manner aforesaid, shall be sufficient evidence of its having been so renewed; and a writ of execution so renewed shall have effect, and be entitled to priority according to the time of the original delivery thereof. The forms Nos. 60 to 68 in the appendix shall be used with such variations as circumstances may require. [E. 592.] C. O. 21, R. 346.

467. Every writ of execution shall be indorsed with the name and place of abode or office of business of the solicitor actually suing out the same, and when the solicitor actually suing out the writ shall sue out the same as agent for another solicitor, the name and place of abode of such other solicitor shall also be indorsed upon the writ; and in case no solicitor shall be employed to issue the writ, then it shall be indorsed with a memorandum expressing that the same has been sued out by the plaintiff or defendant in person, as the case may be, mentioning the city, town, or village, and also the name of the street, and number of the house of such plaintiff's or defendant's residence, if any such there be. [E. 591.]

Expenses of execution

468. In every case of execution the party entitled to execution may levy the poundage, fees and expenses of execution, over and above the sum recovered. [E. 593.]

Indorsement of direction to sheriff

469. Every writ of execution for the recovery of money shall be indorsed with a direction to the sheriff, or other officer or person to whom the writ is directed, to levy the money really due and payable and sought to be recovered under the judgment or order, stating the amount, and also to levy legal interest thereon, if sought to be recovered, together with sheriff's fees, poundage and other expenses of execution. [E. 594.] C. O. 21, R. 347.

Execution may issue within six years

470. As between the original parties to a judgment or order, execution may issue at any time within six years from the recovery of the judgment or the date of the order. [E. 600.] C. O. 21, R. 348.

Leave to issue execution in certain cases

471. In the following cases, namely:

(*a*) Where six years have elapsed since the judgment or date of the order, or any change has taken place by death or otherwise in the parties entitled or liable to execution;

(*b*) Where a husband is entitled or liable to execution upon a judgment or order for or against a wife;

(*c*) Where a party is entitled to execution upon a judgment of assets *in futuro;*

(*d*) Where a party is entitled to execution against any of the shareholders of a joint stock company upon a judgment recorded against such company, or against a public officer or other person representing such company;

the party alleging himself to be entitled to the execution may apply to the court or a judge for leave to issue the execution accordingly. And such court or judge may, if satisfied that the party so applying is entitled to issue execution, make an order to that effect, or may order that any issue or question necessary to determine the rights of the parties shall be tried in any of the ways in which any question in any action may be tried. And in either case such court or judge may impose such terms as to costs or otherwise as shall be just. [E. 601.] C. O. 21, R. 349.

Enforcement of orders

472. Every order of the court or a judge in any cause or matter may be enforced against all persons bound thereby in the same manner as a judgment to the same effect. [E. 602.] C. O. 21, R. 350.

Executions by or against a person not a party

473. Any person not being a party to a cause or matter, who obtains any order or in whose favour any order is made, shall be entitled to enforce obedience to such order by the same process as if he were a party to such cause or matter; and any person not being a party to a cause or matter, against whom obedience to any judgment or order may be enforced, shall be liable to the same process for enforcing obedience to such judgment or order as if he were a party to such cause or matter. [E. 604.] C. O. 21, R. 351.

Facts arisen too late to be pleaded

Stay of execution

474. No proceeding by *audita querela* shall hereafter be used; but any party against whom a judgment has been given may apply to the court or a judge for a stay of execution or other relief against such judgment, upon the ground of facts which have arisen too late to be pleaded; and the court or judge may give such relief and upon such terms as may be just. [E. 605.] C. O. 21, R. 352.

Existing rights to enforce judgment curtailed

475. Nothing in this order shall take away or curtail any right heretofore existing to enforce or give effect to any judgment or order in any manner or against any person or property whatsoever. [E. 606.]

Court may order act to be done at expense of party refusing

476. If a mandamus granted in an action or otherwise or a mandatory order, injunction or judgment for the specific performance of any contract be not complied with the court or judge besides or instead of proceedings against the disobedient party for contempt may direct that the act required to be done may be done so far as practicable by the party by whom the judgment or order has been obtained or some other person to be appointed by the court or judge at the cost of the disobedient party and upon the act being done the expenses incurred may be ascertained in such manner as the court or a judge may direct and execution may issue for the amount so ascertained and costs. [E. 608.] C. O. 21, R. 353.

Enforcement of judgment against corporation

477. Any judgment or order against a corporation wilfully disobeyed may by leave of the court or judge be enforced by execution against the corporate property or by attachment of the persons of the directors or other officers. [E. 609.] C. O. 21, R. 354.

Effect of execution in sheriff's hands as against goods of judgment debtor

478. Except as hereinafter mentioned every writ of execution against goods and chattels shall at and from the time of its delivery to the sheriff to be executed bind all the goods and chattels or any interest in all the goods and chattels of the judgment debtor within the judicial district of the said sheriff and shall take priority to any chattel mortgage, bill of sale or assignment for the benefit of all or any of the creditors of the judgment debtor, executed by him after the receipt by the sheriff of such writ of execution or which by virtue of the provisions of *The Bills of Sales Act* has not taken effect prior to such receipt as against the creditor or creditors' interest under the execution, but shall not take priority to a *bona fide* sale by the judgment debtor, followed by an actual and continued change of possession of any of his goods and chattels without actual notice to the purchaser, that such writ is in the hands of the sheriff of the judicial district wherein the said judgment debtor resides, or carries on business. C. O. 21, R. 356.

Notice of sheriff's sale

479. No sale of personal property except grain seized under any writ of execution or process shall be made without such sale being advertised for at least ten days, by public notice thereof, describing the property to be sold copies of which notice shall be posted in the offices of the local registrar and sheriff, and at least five public places in the locality where the same is to be sold; but when the articles seized are of a perishable nature, or are of such a character as not to allow of a delay of ten days as hereinbefore provided, the same may be sold forthwith. C. O. 21, R. 357.

Perishable articles

Equity of redemption in goods

480. On any writ of execution against goods and chattels, the sheriff charged with the execution of the same, may seize and sell the interest or equity of redemption in any goods or chattels, including leasehold interests in any lands, of the party against whom the writ has issued, and such sale shall convey whatever interest the mortgagor had in such goods and chattels at the time of the seizure. C. O. 21, R. 358.

Leasehold interests

Seizure of money, bank notes, cheques, etc.

481. The sheriff having the execution of any writ of execution against goods, may seize any money, or bank notes, any cheques, bills of exchange, promissory notes, bonds, mortgages, specialties, or other securities for money belonging to the execution debtor, and such sheriff may pay and assign them to the execution creditor, at the sum actually due on and secured by them respectively, if he will accept them as money collected, or the sheriff may sue in his own name for the recovery of the sums secured thereby when the time of payment thereof has arrived, and on payment execute and give valid discharges therefor, but no such sheriff, or other party, shall be bound to sue any party liable upon any such cheque, bill of exchange, promissory note, bond, specialty, or other security, unless the party who sued out the execution furnishes sufficient security to indemnify him from all costs and expenses to be incurred in the prosecution of the action, or to which he may become liable in consequence thereof. C. O. 21, R. 359.

Seizure of mortgages belonging to debtor

482. The officer charged with the execution of any writ of execution against goods, may seize thereunder any registered mortgage in favour of the execution debtor, whether upon lands or chattels by delivering a notice in writing of such seizure to the proper officer in the office where such mortgage is registered; but no such mortgage shall be affected or charged by any writ of execution until delivery of such notice.

Entry in register

(2) Upon receipt of such notice the proper officer shall make an entry thereof in the register, for which he shall be entitled to a fee of fifty cents:

Notice to mortgagor

Provided that unless and until personal service of a notice of seizure on the mortgagor is made, he shall not be affected thereby, and any payments made by him to the mortgagee before service of such notice, shall be deemed good and valid. C. O. 21, R. 360.

Transfer of cheques, etc., discharges sheriff

483. The transference, by the sheriff to the execution creditor, of any cheques or property named in rule 481, shall discharge the sheriff, to the extent of the amount due on and secured thereby. C. O. 21, R. 361.

Payment by sheriff of moneys realised

484. Subject to the provisions of *The Creditors' Relief Act* the sheriff shall pay over to the execution creditor or his solicitor all moneys recovered or a sufficient sum to discharge

the amount directed by the writ to be levied; but the sheriff shall, in all cases, be entitled to first deduct his fees and expenses. C. O. 21, R. 362.

Growing crops

485. No sale of growing crops, whether grain, or roots, shall take place until after the same have been harvested and threshed, or taken and removed from the ground, when after all charges for harvesting, threshing, taking, and removing, have been paid, and all exemptions been claimed and reserved, the balance may be sold. C. O. 21, R. 363.

Issue of execution lands

486. Any person who becomes entitled to issue a writ of execution against goods, may at or after the time of issuing the same issue a writ of execution against the lands of the

Rule 486.—(1) is hereby repealed, and the following substituted therefor:

486 (1) Any person who becomes entitled to issue a writ of execution against goods may then issue the same as well also against the lands of the person liable, or may at any subsequent time issue a writ of execution against the lands of the person liable, in any judicial district, provided that not less than $50 remain due and unpaid on the judgment, and deliver the same to the sheriff of the district named in the writ and charged with the execution of the writ of execution against goods, at or after the time of delivery to him of the writ against goods, and either before or after any return thereof; but such officer shall not sell the said lands, within less than one year from the day on which the writ against lands is delivered to him, nor until three months' notice of such sale has been posted in a conspicuous place in the sheriff's and local registrar's offices respectively, and published two months in the newspaper nearest the lands to be sold. R.S.C. 1911, 486.

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in a conspicuous place in the sheriff's and local registrar's offices respectively, and published two months in the newspaper nearest the lands to be sold.

(2) Where more than one newspaper is published in the same locality the notice of sale may be published in either one. C. O. 21, R. 364.

Return nulla bona before sale of lands

Adjournment of sale

487. No sale shall be had under any execution against lands until after a return of *nulla bona,* in whole or in part, with respect to an execution against goods, in the same suit or matter by the same officer. Where there are no bidders, or no

Rule 487 is hereby repealed and the following substituted therefor:

487. No sale of lands shall be had under any execution until after a return of *nulla bona,* in whole or in part, in the same suit or matter by the same officer. Where there are no bidders, or no sufficient bid has been offered for the land to be sold as aforesaid the sheriff may adjourn such sale from time to time, and a notice of the time and place of such adjourned sale shall be posted by him in a conspicuous place in the sheriff's and local registrar's offices respectively, and such notice shall be sufficient notice of such adjourned sale. R.S.C. 1911, 487.

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Form of transfer where certificate of title not granted

488. In cases where the sheriff or other officer shall sell lands under execution, for which a certificate of title has not been granted, a transfer executed by him in the form prescribed for lands for which a certificate of title has been granted, shall be sufficient to convey the execution debtor's interest therein to the purchaser. C. O. 21, R. 366.

Return nulla bona

489. No sheriff shall make any return of *nulla bona,* either in whole or in part, to any writ against goods, until the whole

of the goods of the execution debtor in the district named in the writ liable to seizure which he can find, have been exhausted. C. O. 21, R. 367.

Repealed April 2, 1918.

490. If the amount authorised to be made and levied under the writ against goods, is made and levied thereunder [illegible] goods no

If money made on

Rule 490 is hereby repealed and the following substituted therefor:

490. If the amount authorised to be made and levied under the writ is made and levied out of goods the person issuing the same or any writ against lands shall not be [illegible] in

entitled to the expenses thereof as against lands, or of any seizure or advertisement of land thereunder, and the return to be made by the officer charged with the execution of the writ as against lands, to such writ, shall be to the effect that the amount has been so made and levied as aforesaid. R.S.C. 1911, 490.

Form No. 60 in the appendix is amended by inserting, in lieu of that part of the said form in lines 10 and 11 thereof reading:

You are commanded that of the goods (*or lands, as the case may be*) of

the following:

You are commanded that of the goods (and lands, *if the writ may include lands*)

of [illegible]

492. Where it is sought to enforce a judgment or order for the recovery of any property other than land or money by writ of delivery the court or a judge may, upon the application of the plaintiff, or person entitled thereto, order that execution shall issue for the delivery of the property, without giving the defendant or other party the option of retaining the property, upon paying the assessed value, if any; or at the option of the plaintiff or person entitled thereto that the sheriff cause to be made of the defendant's goods, the assessed value, if any, of the property, with or without costs in either instance, as may be just, and for such purpose separate writs may be issued for the costs. [E. 647.] C. O. 21, R. 370.

Execution for delivery of property or recovery of assessed value

493. A judgment or order that a party do recover possession of any land, or that any person therein named do deliver up possession of any land to some other person, may be enforced by writ of possession without any order for such purpose, after fifteen days from the entry of the judgment or service of a copy of the order. [E. 644 and 645.] C. O. 21, R. 371.

Writ of possession for recovery of land

494. Upon any judgment or order for the recovery or delivery of possession of any land and costs, there may be either [illegible] the recovery of

Execution for recovery of land and costs

The following Rule is added as Rule 494 (*a*):

494 (*a*). In all cases where lands are sold under execution the sheriff shall give the conduct of the proceedings to confirm the sale to the party or one of the parties under whose special instructions the lands have been sold.

Provided however that a judge may at any time order that the conduct of such proceedings be given to any other interested party. New.

495. In case a part only is levied by the sheriff on or by force of any execution against goods and chattels, the sheriff shall be entitled, besides his fees and expenses of execution, to poundage only upon the amount so made by him, whatever be

Poundage: amount chargeable in certain cases

the sum indorsed upon the writ, and in case the personal estate of the defendant is seized or advertised on or under an execution, but not sold, by reason of satisfaction having been otherwise obtained, or from some other cause, and no money is actually made by the sheriff on or by force of such execution the sheriff shall be entitled to the fees and expenses of execution and poundage only on the value of the property seized, not exceeding the amount indorsed on the writ, or such less sum as a judge may deem reasonable under the circumstances of the case. Any party interested may apply to a judge to fix such sum, either before or after taxation of the sheriff's bill of costs, charges, and expenses, or on review or appeal from such taxation. C. O. 21, R. 374.

Sheriff's charges where satisfaction obtained under writ in other judicial district

496. In the case of writs of execution upon the same judgment to several judicial districts wherein the personal estate of the judgment debtor or debtors has been seized or advertised, but not sold by reason of satisfaction having been obtained under or by virtue of a writ in some other judicial district, and no money has been actually made on such execution, the sheriff shall not be entitled to poundage, but to mileage and fees only for the services actually rendered and performed by him, and the court or a judge may allow him a reasonable charge for such services in case no special fees therefor are assigned in any tariff of costs. C. O. 21, R. 375.

Sheriff charges on withdrawal, stay, etc., of execution

497. Upon the settlement of an execution either in whole or in part by payment, levy, or otherwise, or upon the withdrawal, stay or setting aside of an execution, the sheriff or officer claiming any fees, poundage, incidental expenses, or remuneration which have not been taxed, shall upon being required by any party interested, within forty-eight hours deliver a copy of his bill in detail to the applicant. Such bill shall be taxed by the proper officer upon the applicant obtaining and serving an appointment for such taxation. C. O. 21, R. 376.

Sheriff's costs

Taxation Tender

498. No sheriff shall collect any fees, costs, poundage, or incidental expenses, after having been required to have the same taxed, without taxation; and upon tender of the amount taxed no fees, costs, poundage, or incidental expenses in respect of proceedings subsequently taken shall be allowed to any sheriff. C. O. 21, R. 377.

Duty of taxing officer

499. It shall be the duty of every taxing officer above referred to, to grant an appointment for the taxation of and to tax the bills of costs presented to him for taxation as herein required, upon payment or tender of his fees, and to give when requested a certificate of such taxation and the amount thereof. C. O. 21, R. 378.

500. Either party dissatisfied with the taxation may appeal to a judge for a revision of such taxation. C. O. 21, R. 379. Revision of taxation

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ORDER XXXIV.

DISCOVERY IN AID OF EXECUTIONS.

501. When a judgment or order is for the recovery or payment of money, the party entitled to enforce it may apply to the court or a judge *ex parte* for an order that the debtor liable under such judgment or order, or in the case of a corporation that any officer thereof, be orally examined, as to whether any and what debts are owing to the debtor, and whether the debtor has any and what other property or means of satisfying the judgment or order, before a judge or an officer of the court as the court or judge shall appoint; and the court or judge may make an order for the attendance and examination of such debtor, or of any other person before the local registrar or other person, and for the production of any books or documents. [E. 610.] Examination of judgment debtor or officer of corporation

(2) Where judgment has been obtained as aforesaid the court or judge may *ex parte* on the application of the party entitled to enforce the judgment order any clerk or employee or former clerk or employee of the judgment debtor or any person or officer or officers of any corporation to whom the debtor has made a transfer of his property or effects since the date when the liability or debt which was the subject of the action in which judgment was obtained was incurred to attend before an officer of the court or other person to be named in the order and to submit to be examined upon oath as to the estate and effects of the debtor and as to the property and means he had when the liability or debt aforesaid was incurred, and as to the property or means he still has of discharging the judgment, and as to the disposal he has made of any property since contracting the debt, or incurring the liability, and as to any and what debts are owing to him. Examination of clerk or employee, former clerk or employee or transferee of debtor's property

(3) The examination is to be for the purpose of discovery only, and no order is to be made on the evidence given on such examination, but any such examination may be read on any subsequent proceedings between the same parties, or between the execution creditor and any transferee of the property or effects of the execution debtor, or in any proceeding to obtain payment directly or indirectly whether by attachment of debts, equitable execution or otherwise. C. O. 21, R. 380. Use of examination

502. In case of a judgment or order other than for the recovery or payment of money, if any difficulty shall arise in Difficulty in enforcing judgment

other than for money

or about the execution or enforcement thereof, any party interested may apply to the court or a judge and the court or a judge may make such order thereon for the attendance and examination of any party or otherwise as may be just, and may direct how such judgment or order may be enforced or executed. [E. 611.] C. O. 21, R. 381.

Conduct money

Production documents Rules of examination Disobedience

503. Any person liable to be examined under any of the preceding rules of this order shall be entitled to the like conduct money and payment for expenses, and loss of time as upon attendance at a trial in court, and may be compelled to attend and testify and to produce books and documents in the same manner and subject to the same rules of examination, and the same consequences of neglecting to attend or refusing to disclose the matters in respect of which he may be examined, as in the case of a witness on a trial. C. O. 21, R. 382.

Costs

504. The costs of any application under this order, and of any proceedings arising from, or incidental thereto, shall be in the discretion of the court or a judge. [E. 612.] C. O. 21, R. 383.

ORDER XXXV.

ATTACHMENT OF DEBTS.

Issue of garnishee summons

505. Any plaintiff in any action for a debt, or liquidated demand before or after judgment, and any person who has obtained a judgment or order for the recovery or payment of money, may issue a garnishee summons in the form No. 69 in the appendix hereto, with such variations as circumstances may require. Such summons shall be issued by the local registrar upon the plaintiff or judgment creditor, his solicitor or agent filing an affidavit:

Affidavit therefor

(*a*) Showing the nature and amount of the claim or judgment against the defendant or judgment debtor, and swearing positively to the indebtedness of the defendant or judgment debtor to the plaintiff or judgment creditor;

(*b*) Stating to the best of the deponent's information and belief, that the proposed garnishee (*naming him*), is indebted to such defendant or judgment debtor. C. O. 21, R. 384.

506. Debts owing from a firm, carrying on business within the jurisdiction, may be attached, although one or more members of such firm may be resident abroad:

Affidavit therefor

Provided that any person, having the control or management of the partnership business, or any members of the firm within the jurisdiction, is served with the garnishee summons. [E. 648*i*.]

Service binds debts

507. Service of such summons on the garnishee shall bind any debt, due or accruing due from the garnishee to the defendant, or the judgment debtor.

Manner of service

(2) The garnishee summons may be served whether on the garnishee, defendant, or judgment debtor, in any way that a writ of summons may be served; and the provisions relating to service of a writ of summons shall apply to service of a garnishee summons.

Service on defendant or judgment debtor

(3) A copy of the garnishee summons shall be served on the defendant or judgment debtor (or his solicitor) within twenty days after service on the garnishee, or such further time as the court or a judge *ex parte* may order. C. O. 21, R. 385.

No order to go for payment to plaintiff until, etc.

508. No order shall be made against the garnishee or for payment out of any money, paid into court by the garnishee, until at least ten days after the service of the said summons on the defendant or judgment debtor, and on the garnishee, nor when a garnishee summons issues prior to judgment until the plaintiff shall have recovered a judgment against the defendant.

Application to set aside garnishee

(2) The defendant or judgment debtor or the garnishee, or any person claiming to be interested in the moneys attached, may apply to a judge in chambers to set aside the garnishee summons.

Payment out of court

(3) No money paid into court under these proceedings shall be paid out unless on the written consent of the parties interested, except by order of the court or a judge, which order may be made *ex parte* or on such notice as the court or judge may direct. C. O. 21, R. 386.

Garnishee's costs

509. A garnishee paying money into court shall be entitled to deduct therefrom his necessary disbursements and costs (not exceeding $5), except when the debt due from him to the defendant or judgment debtor is larger than the amount of the plaintiff's claim and costs, in which case the garnishee may deduct such costs and disbursements out of the balance in his hands, but if such balance is not sufficient to cover such disbursements and costs, he may deduct the difference from the amount to be paid into court. C. O. 21, R. 387.

Saskatchewan Government garnishment against

510. The government of the Province of Saskatchewan may be garnisheed under the provisions of this order with regard to moneys due or accruing due, to all persons permanently employed by the government of the said province.

Service

(2) Such garnishee process shall be served upon the provincial treasurer or assistant provincial treasurer in their respective offices.

Default by garnishee

511. If the garnishee does not forthwith pay into court the amount due from him to the debtor, or an amount equal to the claim or judgment and costs, and does not dispute the debt due or claimed to be due from him to such debtor or if he does not appear upon the summons then the court or a judge may, after judgment has been entered against the primary debtor, or at once when the garnishee summons is founded on a judgment already recovered, order that judgment be entered up against the garnishee, and that execution issue, and it may issue accordingly, to levy the amount due from such garnishee, or so much thereof as may be sufficient to satisfy the judgment or order, together with the costs of the garnishee proceedings. [E. 624.] C. O. 21, R. 389.

Dispute by garnishee

512. If the garnishee disputes his liability, or claims that the debt is not attachable, he shall enter with the local registrar within the time specified in the summons or such further time as the court or a judge may allow, a statement showing the grounds on which he disputes liability or claims that the debt is not attachable. After which, on application of the plaintiff or any other person interested, on two days' notice given to the garnishee, the court or judge may fix a time and place for summarily determining the question of liability or whether the debt is attachable, as the case may be; or may

Trial of issue

order that any issue or question necessary for determining such liability, or whether the debt is attachable be tried and determined in any manner in which any issue or question in any action may be tried or determined, and may direct who shall be the parties to such issue or question and any determination under this rule whether summarily or otherwise shall form a judgment of the court and may be enforced as such. [E. 625.] C. O. 21, R. 390.

Delay by plaintiff

Application by garnishee

513. If within two months after the appearance by the garnishee, the plaintiff does not proceed to have the question of liability determined as hereby provided, the garnishee may apply for an order to set aside the garnishee summons. C. O. 21, R. 391.

Suggestion of claim of third party

514. Whenever it is suggested by the garnishee, or any person claiming to be interested, that the debt attached belongs to some third person, or that any third person has a lien or charge upon it, the court or a judge may order such third person or any other person to appear, and state the nature and particulars of his claim upon such debt. [E. 626.] C. O. 21, R. 392.

515. After hearing the allegations of any third person under such order, as in the next preceding rule mentioned, and of any other person whom by the same or any subsequent order the court or a judge may order to appear or in case of such third person not appearing when ordered, the court or judge may order execution to issue to levy the amount due from such garnishee, or any issue or question to be tried or determined according to the preceding rules of this order, and may bar the claim of such third person, or make such other order as such court or judge shall think fit, upon such terms, in all cases, with respect to the lien or charge (if any) of such third person, and to costs, as the court or judge shall think just and reasonable. [E. 627.] C. O. 21, R. 393. Procedure when third person suggested as entitled

516. Payment made by or execution levied upon the garnishee under any such proceeding as aforesaid shall be a valid discharge to him against the judgment debtor to the amount paid or levied, although such proceeding may be set aside, or the judgment or order reversed. [E. 628.] C. O. 21, R. 394. Garnishee discharged by payment or levy

517. The garnishee shall not be liable for the costs of the proceedings, unless and in so far only as occasioned by setting up a defence which he knew or ought to have known was untenable; and the plaintiff or judgment creditor in garnishee proceedings shall be entitled to tax against the defendant or judgment debtor and add to the judgment the costs of such proceedings, unless the court or a judge otherwise orders and subject to this provision the cost of all parties shall be in the discretion of the court or judge. C. O. 21, R. 395. Costs in garnishee proceedings

518. No execution shall in any case issue to levy the money owing from any garnishee until and so far only as such money shall become fully due. C. O. 21, R. 396. Execution stayed till money due

519. No debt due or accruing due to a mechanic, workman, labourer, servant, clerk or employee for or in respect of his wages or salary shall be liable to seizure or attachment unless the said debt exceeds the sum of $25 and then only to the extent of the excess: Exemption from garnishment

Provided that nothing in this rule contained shall apply to any case where the debt sued for, or in respect of which the judgment was recovered has been contracted for, board and lodging. Exception

(2) If the said amount of $25 or any portion thereof is paid into court it shall not be necessary for the debtor to claim the same but he shall be entitled to have it paid out to him at any time on application to the local registrar, but in the event of no such application being made until the expiration of two months after such payment in, or after judgment is recovered against the debtor whichever is later the judgment creditor Payment out of exemption

shall be entitled, on application to the court or a judge, to have the said sum or so much thereof as may be sufficient to satisfy his judgment paid out to him. C. O. 21, R. 397, amend. by c. 8 of 1903, Sess. 1, s. 2.

ORDER XXXVI.

INTERLOCUTORY ORDERS AS TO MANDAMUS, INJUNCTIONS, OR INTERIM PRESERVATION OF PROPERTY.

Interlocutory applications How made

520. Applications for interlocutory orders for mandamus, injunction, or receiver, or the interim preservation of property, may be made *ex parte* in the first instance, or by notice of motion:

Provided that, on an *ex parte* application, the court or judge may require notice to be given to any party or parties interested. C. O. 21, R. 398.

Interim preservation of property

521. When, by any contract, a *prima facie* case of liability is established, and there is alleged as matter of defence a right to be relieved wholly or partially from such liability, the court or a judge may make an order for the preservation or interim custody of the subject matter of the litigation, or may order that the amount in dispute be brought into court or otherwise secured. Application for an order under this rule may be made in chambers, by notice of motion, by any party at any time, after his right thereto appears from the pleadings; or, if there be no pleadings, is made to appear by affidavit or otherwise to the satisfaction of the court or judge. [E. 657 and 663.] C. O. 21, R. 399.

Order for early trial to avoid going into merits on interlocutory application

522. Whenever an application shall be made before trial for an injunction or other order, and on the opening of such application, or at any time during the hearing thereof, it shall appear to the judge that the matter in controversy in the cause or matter is one which can be most conveniently dealt with by an early trial, without first going into the whole merits on affidavit or other evidence for the purposes of the application, it shall be lawful for the judge to make an order for such trial accordingly, and to direct such trial to be held at the next or any other sittings for any place, if from local or other circumstances it shall appear to him to be convenient so to do, and in the meantime to make such order as the justice of the case may require. [E. Or. L., R. 1*a*.]

Order for sale of goods, etc.

523. It shall be lawful for the court or a judge, on application of any party, to make any order for the sale by any person or persons named in such order, and in such manner, and on such terms as the court or judge may think desirable, of any

goods, wares or merchandise, which may be of a perishable nature or likely to injure from keeping, or which for any other just or sufficient reason it may be desirable to have sold at once. [E. 658.] C. O. 21, R. 400.

Detention, preservation or inspection of property

524. It shall be lawful for the court or a judge, upon the application of any party to a cause or matter, and upon such terms as may be just, to make any order for the detention, preservation or inspection of any property or thing, being the subject of such cause or matter, or as to which any question may arise therein, and for all or any of the purposes aforesaid to authorise any persons to enter upon or into land or building in the possession of any party to such cause or matter, and for all or any of the purposes aforesaid to authorise any samples to be taken, or any observation to be made or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence. [E. 659.] C. O. 21, R. 401.

Inspection by judge

525. It shall be lawful for any judge, by whom any cause or matter may be heard or tried with or without a jury, or before whom any cause or matter may be brought, to inspect any property or thing concerning which any question may arise therein. [E. 660.]

Inspection by jury

526. The provisions of rule 524 shall apply to inspection by a jury, and in such case the court or a judge may make all such orders upon the sheriff or other person as may be necessary to procure the attendance of the jury at such time and place, and in such manner as they or he may think fit. [E. 661.] C. O. 21, R. 402.

Mandamus, injunction and receiver

527. An application for an order under Rule 523 and 524 of this order may be made to the court or a judge by any party. If the application be by the plaintiff, it may be made after notice to the defendant at any time after the issue of the writ of summons, and if it be made by any other party, then on notice to the plaintiff, and at any time after appearance by the party making the application. [E. 662.]

Order for delivery of specific chattel claimed under lien or payment into court

528. Where an action is brought to recover, or a defendant in his defence seeks by way of counterclaim to recover specific property other than land, and the party from whom such recovery is sought does not dispute the title of the party seeking to recover the same, but claims to retain the property by virtue of a lien or otherwise as security for any sum of money, the court or a judge may, at any time after such last mentioned claim appears from the pleadings, or if there be no pleadings, by affidavit or otherwise to the satisfaction of the court or judge, order that the party claiming to recover

the property be at liberty to pay into court, to abide the event of the action, the amount of money in respect of which the lien or security is claimed, and such further sum (if any) for interest and costs as such court or judge may direct, and that, upon such payment into court being made, the property claimed be given up to the party claiming it. [E. 664.] C. O. 21, R. 403.

Allowance out of estate

Pendente lite

529. Where any real or personal estate forms the subject of any proceedings in the court, and the judge is satisfied that the same will be more than sufficient to answer all the claims thereon which ought to be provided for in such proceedings, the judge may, at any time after the commencement of the proceedings, allow to the parties interested therein, or to any one or more of them, the whole or part of the annual income of the real estate or a part of the personal estate, or the whole or a part of the income thereof, up to such times as the judge shall direct. [E. 665.] C. O. 21, R. 404.

Injunction

530. An injunction shall be by a judgment or order, and any such judgment or order shall have the effect which a similar judgment or order has in England. [E. 667.] C. O. 21, R. 405.

Injunction against wrongful act or breach of contract

531. In any cause or matter in which an injunction has been, or might have been claimed, the plaintiff may, before or after judgment, apply for an injunction to restrain the defendant or respondent from the repetition or continuance of the wrongful act or breach of contract complained of, or from the commission of any injury or breach of contract of a like kind relating to the same property or right, or arising out of the same contract; and the court or a judge may grant the injunction, either upon or without terms, as may be just. [E. 668.] C. O. 21, R. 406.

MANDAMUS.

Mandamus

Statement of claim

532. The plaintiff, in any action in which he shall claim a mandamus to command the defendant to fulfil any duty in the fulfilment of which the plaintiff is personally interested, shall include such claim in his statement of claim. [E. 719.] C. O. 21, R. 407.

Order upon defendant for performance

533. If judgment be given for the plaintiff the court or judge may by the judgment command the defendant either forthwith, or on the expiration of such time and upon such terms as may appear to the court or a judge to be just, to perform the duty in question. The court or a judge may also extend the time for the performance of the duty. [E. 721.] C. O. 21, R. 408.

534. No writ of mandamus shall hereafter be issued in any action but a mandamus shall be by judgment or order which shall have the same effect as a similar judgment or order has in England. [E. 722.] C. O. 21, R. 411. Mandamus to be by judgment or order

535. In the event of noncompliance with the judgment or order as aforesaid the same may be enforced by prerogative mandamus as in England. C. O. 21, R. 409. Enforcement

536. No action or proceeding shall be commenced or prosecuted against any person in respect of anything done in obedience to a judgment or order for a mandamus. C. O. 21, R. 410. Protection of person acting under mandamus

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ORDER XXXVII.

RECEIVERS.

537. In every case in which an application is made for the appointment of a receiver by way of equitable execution, the court or a judge, in determining whether it is just or convenient that such appointment should be made, shall have regard to the amount of the debt claimed by the applicant to the amount which may probably be obtained by the receiver, and to the probable costs of his appointment; and may, if they or he shall so think fit, direct any inquiries on these or other matters before making the appointment. [E. Or. L., R. 15*a*.] Receiver by way of equitable execution

538. Where an order is made directing a receiver to be appointed, unless otherwise ordered, the person to be appointed shall first give security, to be allowed by the court or a judge, duly to account for what he shall receive as such receiver, and to pay the same as the court or judge shall direct; and the person so to be appointed shall, unless otherwise ordered, be allowed a proper salary or allowance. Such security shall be by recognisance in form No. 70 in the appendix unless the court or a judge shall otherwise order. [E. 672.] C. O. 21, R. 412. Receiver

Security

Remuneration

539. Where any judgment or order is pronounced or made in court appointing a person therein named to be receiver, the court or a judge may adjourn to chambers the cause or matter then pending, in order that the person named as receiver may give security as in the last preceding rule mentioned, and may thereupon direct such judgment or order to be drawn up. [E. 673.] Adjournment to chambers to complete security

540. When a receiver is appointed with a direction that he shall pass accounts, the court or judge shall fix the days upon Time for filing accounts and payment of balances

which he shall (annually or at longer or shorter periods) file and pass such accounts, and also the days upon which he shall pay the balances appearing due on the accounts so filed, or such part thereof as shall be certified as proper to be paid by him. And with respect to any such receiver as shall neglect to file and pass his accounts, and pay the balances thereof at the times so to be fixed for that purpose as aforesaid, the judge before whom any such receiver is to account may from time to time, when his subsequent accounts are produced to be examined and passed, disallow the salary therein claimed by such receiver; and may also, if he shall think fit, charge him with interest upon the balances so neglected to be paid by him during the time the same shall appear to have remained in the hands of any such receiver. [E. 674.] C. O. 21, R. 413.

Neglect of receiver

Forms of receiver's accounts

541. Receiver's accounts shall be in the form No. 71 in the appendix, with such variations as circumstances may require, together with an affidavit verifying the same in the form No. 72 in the appendix, with such variations as circumstances may require, an appointment shall thereupon be obtained by the plaintiff or person having the conduct of the cause for the purpose of passing such accounts. [E. 675, 676.]

Default of receiver Procedure on

542. In case of any receiver failing to file any account or affidavit, or to pass such account, or to make any payment, or otherwise, the receiver or the parties, or any of them, may be required to attend at chambers to show cause why such account or affidavit has not been filed, or such account passed, or such payment made, or any other proper proceedings taken, and thereupon such directions as shall be proper may be given at chambers or by adjournment into court, including the discharge of any receiver and appointment of another, and payment of costs. [E. 677.] C. O. 21, R. 414.

Receiver's accounts

543. When a receivership has been completed the book containing the accounts shall be deposited in the local registrar's office. C. O. 21, R. 415.

Passing accounts

544. The accounts of liquidators and of guardians shall be passed and verified in the same manner as receiver's accounts. [E. 679.] C. O. 21, R. 416.

ORDER XXXVIII.

ATTACHMENT OF PERSONAL PROPERTY.

Attachment of goods

545. After the commencement of any suit wherein the claim is for the recovery of a debt of $50 or upwards, from the

defendant to the plaintiff, upon affidavit made by the plaintiff, or one of several plaintiffs, if more than one, his or their agent, having a personal knowledge of the matter, stating clearly and succinctly from what cause such debt arose, and the amount thereof, and that he has good reason to believe (giving reasons therefor) that the defendant: Affidavits required

(*a*) Is about to abscond, or has absconded from Saskatchewan leaving personal property in any judicial district thereof liable to seizure under execution for debt; or

(*b*) Has attempted to remove such personal property out of Saskatchewan or to sell or dispose of the same with intent to defraud his creditors generally or the plaintiff in particular; or

(*c*) Keeps concealed to avoid service of process; and

(*d*) In either case that the deponent verily believes that without the benefit of the attachment the plaintiff will lose his debt or sustain damage;

and upon the further affidavit of one other credible person, that he is well acquainted with the defendant, and has good reason to believe (giving such reasons) that the defendant is about to abscond, or has absconded, or has attempted to remove his personal property out of Saskatchewan or to sell or dispose of the same, or keeps concealed with intent as aforesaid, as the case may be, the court or a judge being satisfied with the reasons aforesaid on application *ex parte* may direct the local registrar to issue a writ of attachment in form No. 73 in the appendix which writ shall be executed by the sheriff according to its tenor: Application to judge

Provided that in any case where the debtor has absconded or is about to abscond from Saskatchewan leaving no wife or family behind no property of such debtor shall be exempt from seizure. C. O. 21, R. 417. Exemption from seizure

546. A copy of every such writ shall be served on the debtor against whose effects the same is issued at the time of making any seizure thereunder, or as soon thereafter as such service can be effected, if the said debtor can be found; but if such personal service cannot be effected, a copy thereof shall be left with some grown up person resident at the place where such seizure is made, or if no person is resident, posted in a conspicuous place on the premises. C. O. 21, R. 418. Copy writ of attachment to be served

547. Immediately after making a seizure under the said writ the sheriff shall make a return of the writ, and with such return, transmit annexed thereto an inventory of the property seized, and the value thereof according to the best of his judgment, and an affidavit of the manner in which service of such writ has been effected. C. O. 21, R. 419. Sheriff's return and inventory

Return of goods seized on giving security or deposit of value claimed

548. Upon the seizure of any property under the writ hereinbefore described the person in whose possession it was at the time of seizure, may have the same returned to him upon giving the sheriff sufficient security for, or paying into court, an amount equal to its appraised value, as shown in the inventory prescribed by the preceding rule hereof. C. O. 21, R. 420.

Unless redelivered sheriff to hold until judgment

549. Unless the property seized is redelivered or relinquished by the sheriff under any of the provisions hereof, he shall hold the same until the plaintiff obtains judgment in the cause, and an execution upon such judgment is delivered to the sheriff:

Redelivery ordered where unnecessary delay

Provided that in case the plaintiff shall be guilty of any unnecessary delay in the prosecution of his suit to judgment, the court or a judge may order the redelivery of the property so seized, to the person from whose possession it was taken, unless some other writ of attachment or execution against the defendant shall be in the sheriff's hands for execution. C. O. 21, R. 421.

Subsequent proceedings

550. Notwithstanding the issue of a writ of attachment the cause shall be proceeded with in the ordinary way, but the plaintiff shall not have judgment against the defendant except by order of the court or a judge, and in case the plaintiff fails to recover judgment for the full amount of the debt sworn to, he shall not be entitled to any costs but may be ordered to pay the costs of the defendant. C. O. 21, R. 422.

Setting aside writ

551. A writ of attachment may be set aside by the court or a judge on satisfactory proof by affidavit that the creditor who sued out such writ had not reasonable cause for taking such proceeding. C. O. 21, R. 423.

Disposal of cattle or perishable goods pending suit

552. In case any horses, cattle, sheep or any perishable goods or chattels or such as from their nature cannot be safely kept or conveniently taken care of, are taken under any writ of attachment, the officer who seized the same, shall have them appraised and valued on oath by two competent persons, and in case the plaintiff desires it and deposits with the sheriff a bond to the defendant executed by one or more persons whose sufficiency shall be approved of by such officer, in double the amount of the appraised value of such articles, conditioned for the payment of such appraised value to the defendant together with all costs and damages incurred by the seizure and sale thereof in case judgment is not obtained by the plaintiff against the defendant, then the sheriff may sell all or any of such enumerated articles at public auction, to the highest bidder, giving not less than six days' notice of such sale, unless any of the articles are of such a nature as not to allow of that delay, in which case the officer shall

sell such articles last mentioned forthwith, and shall hold the proceeds of such sale for the same purpose as he would have held any property seized under the attachment. C. O. 21, R. 424.

Plaintiff omitting to give security

553. If the plaintiff after notice to himself or his solicitor of the seizure of any articles enumerated in rule 552 hereof, neglects or refuses to deposit the bond or only offers a bond with sureties insufficient in the judgment of the sheriff, then after the lapse of four days next after the notice, the sheriff shall be relieved from all liability to the plaintiff in respect to the articles so seized, and the sheriff shall forthwith restore the same to the person from whose possession he took such articles. [R.S.O. 1897, c. 79, s. 6.] C. O. 21, R. 425.

ORDER XXXIX.

REPLEVIN.

Recovery of goods unlawfully detained

554. In any action brought for the recovery of any personal property, and claiming whether alone or with any other claim, that such property was unlawfully taken or is unlawfully detained, the plaintiff may at any time after the issue of the writ of summons, obtain a writ of replevin for the delivery of the property to him on his complying with the following rules; such writ shall be in the form No. 74 in the appendix with such variations as circumstances may require; but nothing herein contained shall authorise the replevying any property seized by the sheriff or other officer charged with the execution of any process issued out of the court. C. O. 21, R. 426.

Property in custody of court

Issue of writ of replevin

555. Writs of replevin shall be issued by the local registrar upon the plaintiff, or his duly authorised agent filing an affidavit naming the judicial district in which the property is, and

Affidavit therefor

1. Embodying a description of the property sought to be replevied, and the value thereof, to the best of the deponent's belief; and that the person claiming is the owner, or is entitled to the possession of the said property;

2. Further stating if replevin is sought in the case of property distrained for rent or *damage feasant,* that the property was taken under colour of distress for rent or *damage feasant,* as the case may be;

3. Or in the case of property wrongfully taken out of the possession of the claimant, or fraudulently got out of his possession stating in addition to the particulars required by clause 1 of this rule the time when and the wrongful and

fraudulent manner in which the same was taken, or gotten out of his possession, and such facts and circumstances as show that the claimant is entitled to the possession of the property. C. O. 21, R. 427.

Replevin bond

Assignment of

Form

Defendant's rights

556. Before the sheriff replevies, he shall take a bond in double the value of the property to be replevied as stated in the writ. The bond shall be assignable to the defendant by the sheriff indorsing his name thereon, and such indorsement shall enable the defendant to bring an action thereon in his own name, against the parties who have executed it. The bond may be in the form No. 75 in the appendix with such variations as circumstances may require, and the parties to such bond shall be liable to the defendant, and the defendant be entitled to recover from them in such action, as well the value of the property replevied, as the amount of any judgment in his favour in the original action, as also such damages as the defendant may have sustained, by reason of the detention of the property replevied by means of the said writ. C. O. 21, R. 428.

Service of copy of writ

Property secured or concealed from sheriff

557. A copy of such writ shall be served upon the defendant personally, or if he cannot be found left at his usual or last place of abode with his wife or some other grown up person being a member of his family or household, or if no such person resident there posted in a conspicuous place on the premises, or if the defendant has no known residence posted up in the office of the local registrar who issued the writ; but such service or posting shall not be made until the sheriff has replevied the property described in the writ or such part thereof as can be found; and in case the said sheriff or other officer has good reason to suspect that the property to be replevied or any part thereof is secured, contained, or concealed in any dwelling house, building or enclosure of the defendant, or of any other person keeping or holding the same, and the said sheriff or officer demands from the owner, occupier or other person in charge of the premises aforesaid deliverance of the said property, and the same shall not be delivered upon such demand, he may, and if necessary he shall (but only between sunrise and sunset) break open such premises, and enter and search the same for the purpose of replevying the property demanded, and if found therein replevy the same.

Defendant's right to retain on giving security

(2) The defendant or his agent (except in case of distress for rent or *damage feasant*) shall have the right to retain possession of the property described in the writ or any portion thereof if he shall give approved security to the sheriff in the form No. 76 in the appendix with such variations as circumstances may require; such security shall be assigned on request to the plaintiff by the sheriff indorsing his name thereon; and such indorsement shall be sufficient to enable

such plaintiff to bring action thereon in his own name against the several parties who have executed such security. C. O. 21, R. 429 and 1901, c. 10, s. 7.

558. The sheriff shall make a return to the writ to the court whence it issued and shall annex to the return: Sheriff's return to writ

1. The names, places of residence, and occupation, of the sureties in, and the date of the bond taken from the plaintiff, and the names of the witnesses thereto;

2. The number, quality, and quantity of the articles of property replevied, and in case he has replevied only a portion of the property mentioned in the writ, and cannot replevy the residue, he shall state in his return the articles which he cannot replevy and the reason why not;

3. If the property is retained by the defendant under subrule (2) of rule 557 the names, places of residence and occupation of the parties and the date of the bond taken from the defendant and the names of the witnesses thereto. C. O. 21, R. 430, added to by 1901, c. 10, s. 8.

ORDER XL.

INTERPLEADER.

559. Relief by way of interpleader may be granted: Interpleader

1. Where the person seeking relief (in this order called the applicant) is under liability for any debt, money, goods or chattels, for or in respect of which he is, or expects to be, sued by two or more parties (in this order called the claimants) making adverse claims thereto; Cases in which relief granted

2. Where the applicant is a sheriff or other officer charged with the execution of process by or under the authority of the supreme court and claim is made to any money, goods, or chattels, taken or intended to be taken in execution or attachment under any process, or to the proceeds or value of any such goods or chattels by:

(*a*) Any person other than the person against whom the process issued;

(*b*) Any landlord for rent;

(*c*) Any second or subsequent execution creditor claiming priority over any previous judgment, execution, process or proceeding;

(*d*) The execution or attachment debtor claiming the benefit of any exemptions from seizure allowed by law. [E. 850.] C. O. 21, R. 431.

Repealed - April 2-1913

Sheriff's interpleader

Claim to be

Rule 560 is repealed, and the following substituted therefor:

560. Where a claim is made to or in respect of any land, money, goods or chattels, taken in execution under the process of the court, it shall be in writing, and upon the receipt of the claim, the sheriff or his officer shall forthwith give notice in writing thereof to the execution creditor according to form No. 77 in the appendix or to the like effect, and the execution creditor shall within fourteen days after receiving the notice, give notice in writing to the sheriff or his officer that he admits or disputes the claim, according to form No. 78 in the appendix or to the like effect. If the execution creditor admits the title of the claimant and gives such notice as directed by this Rule, he shall only be liable to such sheriff or officer for any fees and expenses incurred prior to the receipt of the notice admitting the claim. (E. Or. 57, R. 16) R.S.C. 1911, 560.

(2) Any claimant may be examined for discovery on his claim filed with the sheriff, and all the provisions of Order XXIII shall *mutatis mutandis* apply to such examination for discovery and such claimant shall be liable to have his claim barred for refusing or neglecting to attend at the time and place appointed for his examination, or refusing to be sworn or to answer any lawful question put to him by the examiner or by any party entitled to do so, or his counsel, solicitor or agent. New.

(3) The costs of such examination for discovery shall be borne in the first instance by the party who examines, but if interpleader proceedings are taken, the costs of such examination for discovery shall be borne by the unsuccessful party in the interpleader proceedings, unless otherwise ordered. New.

(4) If for any good reason such examination for discovery cannot be completed within fourteen days from the receipt by the execution creditor of the notice from the sheriff, the court or a judge may grant to the execution creditor, on application *ex parte*, an extension of such fourteen days to give notice to the sheriff. New.

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be just and reasonable in respect of the same:

Provided always that the plaintiff shall receive notice of such intended application, and if he desires it, may attend the hearing of the same, and if he attend, the judge may, in and for the purposes of such application, make all such orders as to costs as may be just and reasonable. [E. O. 57, R. 16*a*.]

If claim not admitted or abandoned, issue of summons

562. Where the execution creditor does not in due time, as directed by the last preceding rule, admit or dispute the title of the claimant to the goods or chattels, and the claimant does not withdraw his claim thereto by notice in writing to the sheriff or his officer, the sheriff may serve a notice of motion on the claimant calling on him to appear and maintain or relinquish his claim, and should the claimant withdraw his claim by notice in writing to the sheriff or his officer, or the execution creditor in like manner serve an admission of the title of the claimant prior to the return day of such notice of motion, and at the same time give notice of such admission to the claimant, the court or a judge may, in and for the purpose of the interpleader proceedings, make all such orders as to costs, fees, charges and expenses as may be just and reasonable. [E. Or. 57, R. 12.] C. O. 21, R. 433.

Admission or abandonment after summons

Costs

Matters to be proved by applicant

563. The applicant must satisfy the court or a judge by affidavit or otherwise:

1. That the applicant claims no interest in the subject matter in dispute, other than for charges or costs; and

2. That the applicant does not collude with any of the claimants; and

3. That the applicant, except where he is a sheriff or other officer charged with the execution of process by or under the authority of the supreme court who has seized goods and who has withdrawn from possession in consequence of the execution creditor admitting the claim of the claimant under rule 560 of this order, is willing to pay or transfer the subject matter into court, or to dispose of it as the court or a judge may direct. [E. 851.] C. O. 21, R. 434.

Adverse titles of claimants

564. The applicant shall not be disentitled to relief by reason only that the titles of the claimants have not a common origin, but are adverse to and independent of one another. [E. 852.] C. O. 21, R. 435.

Application by defendant

565. When the applicant is a defendant, application for relief may be made at any time after service of the writ of summons. [E. 853.] C. O. 21, R. 436.

Summons by applicant

566. The applicant may make a motion calling on the claimants to appear, and state the nature and particulars of their claims, and either to maintain or relinquish them. [E. 854.] C. O. 21, R. 437.

Stay of action

567. If the application is made by the defendant in an action, the court or a judge may stay all further proceedings in the action. [E. 855.] C. O. 21, R. 438.

Order on summons

Issue

568. If the claimants appear in pursuance of the notice of motion, the court or a judge may order, either that any claimant be made a defendant in any action already commenced, in respect to the subject matter in dispute, in lieu of or in addition to the applicant, or that an issue between the claimants be stated and tried, and in the latter case may direct which of the claimants is to be plaintiff, and which defendant, as also the time and place for the trial of such issue. [E. 856.] C. O. 21, R. 439.

Summary disposal

569. The court or a judge may, with the consent of both claimants or on the request of any claimant, if, having regard to the value of the subject matter in dispute, it seems desirable so to do, dispose of the merits of their claims, and decide the same in a summary manner and on such terms as may be just. [E. 857.] C. O. 21, R. 440.

Question of law

570. When the question is a question of law, and the facts are not in dispute, the court or a judge may either decide the question without directing the trial of an issue, or order that a special case be stated for the opinion of the court. If a special case is stated, the provisions herein relating to special cases shall, as far as applicable, apply thereto. [E. 858.] C. O. 21, R. 441.

Claimant not appearing or otherwise in default

571. If a claimant, having been duly served with a notice of motion calling on him to appear and maintain, or relinquish, his claim, does not appear in pursuance of the notice, or, having appeared, neglects or refuses to comply with any order made after his appearance, the court or a judge may make an order declaring him, and all persons claiming under him, forever barred against the applicant, and persons claiming under him, but the order shall not affect the rights of the claimants as between themselves. [E. 859.] C. O. 21, R. 442.

Appeal lies

Decision otherwise final

572. Subject to the provisions of this order an appeal shall lie to the court *en banc* from the decision of the court or a judge in any interpleader proceeding, but subject to such appeal the decision of the court or judge shall be final and conclusive against the claimants and all persons claiming under them. C. O. 21, R. 443.

Order for sale of goods seized

573. When goods or chattels have been seized in execution or under attachment by a sheriff or other officer charged with the execution of process of the supreme court and any claimant alleges that he is entitled, under a bill of sale or otherwise, to the goods or chattels by way of security for debt, the court or a judge may order the sale of the whole or a part thereof, and direct the application of the proceeds of the sale in such manner and upon such terms as may be just. [E. 861.] C. O. 21, R. 444.

Discovery and inspection

Powers of judge

574. The rules of court in respect to discovery and inspection shall with the necessary modifications apply in interpleader proceedings, and the court or a judge who tries the issue may finally dispose of the whole matter of the interpleader proceedings, including all costs not otherwise provided for. [E. 862.] C. O. 21, R. 445.

Application where several executions against same property

575. In case the sheriff has more than one writ at the suit or instance of different parties against the same property, it shall not be necessary for the sheriff to make separate motions on such writs, or in each case; but he may make one motion, and make all the parties who are execution creditors parties to the said motion; and the court or a judge before whom the motion is made, may make such order therein as if a separate motion had been made upon and in respect of each writ. C. O. 21, R. 446.

Delivery of property to claimant pending adjudication

576. Pending the adjudication of any such claim the sheriff may upon sufficient security being given to him by bond, or otherwise, for the forthcoming and delivery to him of the property so taken, or the value thereof, when demanded, permit the claimant to retain the possession of the same until there

shall be final adjudication in respect of the same; but in every such case it shall be competent for the said sheriff or other officer, at any time he shall see fit, to resume the actual and absolute possession and custody of the said property notwithstanding such bond or security. Horses, cattle, sheep or any perishable goods the subject of interpleader, may at the request of either party, and upon his furnishing sufficient security, or by order of the court or a judge, be sold by the seizing officer at public auction to the highest bidder, giving not less than ten days' notice of such sale, unless any of the articles are of such a nature as not to admit of delay, in which case they may be sold forthwith. C. O. 21, R. 447.

Sale of cattle or perishable goods

577. The court or a judge may, in and for the purposes of any interpleader proceedings, make all such orders as to costs and all other matters as may be just and reasonable. [E. 864.] C. O. 21, R. 448.

Costs and other matters

ORDER XLI.

SALE OF LAND, PARTITION, ETC.

578. If in any cause or matter relating to any real estate, it shall appear necessary or expedient that the real estate or any part thereof should be sold, the court or a judge may order the same to be sold, and any party bound by the order and in possession of the estate, or in receipt of the rents and profits thereof, shall be compelled to deliver up such possession or receipt to the purchaser, or such other person as may be thereby directed. [E. 680.] C. O. 21, R. 449.

Court may order sale of real estate

579. In all cases where a sale, mortgage, partition or exchange is ordered, the court or a judge shall have power, in addition to the powers already existing, with a view to avoiding expense or delay, or for other good reason, to authorise the same to be carried out:

Mode of carrying out sale, mortgage, etc., when ordered by court

1. By laying proposals before the judge in chambers for his sanction; or

2. By proceedings altogether out of court, any moneys produced thereby being paid into court or to trustees, or otherwise dealt with as the judge in chambers may order:

Provided always, that the judge shall not authorise the said proceedings altogether out of court, unless and until he is satisfied, by such evidence as he shall deem sufficient, that all persons interested in the estate to be sold, mortgaged, partitioned, or exchanged are before the court, or are bound by the order for sale, mortgage, partition or exchange, and every order authorising the said proceedings altogether out of court shall be

prefaced by a declaration that the judge is so satisfied as aforesaid, and a statement of the evidence upon which such declaration is made. [E. 680*a*.] C. O. 21, R. 450.

Order for sale in debenture holders' action

580. In debenture holders' actions where the debenture holders are entitled to a charge by virtue of the debentures, or of a trust deed, or otherwise, and the plaintiff is suing on behalf of himself and other debenture holders, and where the judge in person is of opinion that there must eventually be a sale, he may in his discretion direct a sale before judgment, and also after judgment, before all the persons interested are ascertained whether served or not. [E. 51, R. 1*b*.]

Sale by court

Approval of judge

Parties

581. Where a judgment or order is given or made, whether in court or in chambers, directing any property to be sold, unless otherwise ordered, the same shall be sold, with the approbation of a judge, to the best purchaser that can be got, the same to be allowed by the judge, and all proper parties shall join in the sale and conveyance as the judge shall direct. [E. 682.] C. O. 21, R. 451.

Originating summons for foreclosure, etc.

582. Any mortgagee or mortgagor, whether legal or equitable, or any person entitled to or having property subject to a legal or equitable charge, or any person having the right to foreclose or redeem any mortgage, whether legal or equitable, may obtain an originating summons, returnable in chambers, for such relief of the nature or kind following as may by the summons be specified, and as the circumstances of the case may require, that is to say: sale, foreclosure, delivery of possession by the mortgagor, redemption, reconveyance, delivery of possession by the mortgagee. [E. 767*a*.] C. O. 21, R. 452.

583. The court or a judge may upon such summons pronounce such judgment and make such orders as the case may require, including orders, vesting such property in such person or persons as may be found or declared entitled thereto for such estate or interest as may be requisite. And may deal with questions of priority and questions of fact that may arise, and for that purpose order any issue to be tried and grant such relief as the parties may be entitled to, in the same manner and to the same extent as if the action had been commenced by writ of summons. [E. 770.] C. O. 21, R. 453.

Persons to be served

584. The persons to be served with the said summons shall be such persons as, under the existing practice, would be proper defendants to an action for the like relief as that specified by the summons. [E. 767*b*.] C. O. 21, R. 454.

Service on other persons

585. The court or a judge may direct such other persons to be served with the summons as they or he may think fit. [E. 768.] C. O. 21, R. 455.

586. The application shall be supported by such evidence as the court or a judge may require, and directions may be given as they or he may think just for the trial of any questions arising thereout. [E. 769.] C. O. 21, R. 456. Evidence Trial of questions

587. In all proceedings before the court or a judge to recover the amount due under a mortgage whether such proceedings be by way of action or by originating summons for the foreclosure or sale of the mortgaged property, on in any other way if the moneys secured by the mortgage are payable both as to principal and interest by monthly instalments for an indefinite period, dependent for its duration upon computations resulting from the investment of either the whole or a portion of such monthly instalments by the mortgagee, the mortgagee shall, if ordered by the court or a judge so to do, before being entitled to a judgment or to a final order for sale or foreclosure of the mortgaged premises, produce to the court or judge all the original books and accounts, papers and documents in connection with the loan and show therefrom how the amount claimed to be due on such mortgage is made up. 1901, c. 10, s. 9. Mortgagee may be required to produce books

588. The court or a judge may give any special directions touching the carriage or execution of the judgment or order or the service thereof upon persons not parties as they or he may think just. [E. 771.] C. O. 21, R. 457. Special directions

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ORDER XLII.

MOTIONS AND APPLICATIONS.

589. Applications for summonses, rules and orders to show cause and applications authorised to be so made by these rules may be made *ex parte*. Other applications in court and in chambers shall be by notice of motion except where otherwise specially provided. But the court or a judge if satisfied that delay caused by proceeding in the ordinary way would or might entail irreparable or serious mischief, may make any order *ex parte* upon such terms as to costs or otherwise, and subject to such undertaking, if any, as the court or judge may think just; and any party affected by such order may move to set it aside or to vary it. [E. 698.] C. O. 21, R. 458. Ex parte applications; Court motions; Chamber applications; Order ex parte if delay injurious

590. Every notice of motion to set aside, remit, or enforce an award, or for attachment, or committal, or to strike off the rolls, shall state in general terms the grounds of the application, and, where any such motion is founded on evidence by affidavit, a copy of any affidavit intended to be used shall be served with the notice of motion. [E. 699.] C. O. 21, R. 459. Grounds to be stated in certain cases; Service of affidavits

Motions Length of notice

591. Unless the court or a judge gives special leave to the contrary, there must be at least two clear days between the service of a notice of motion and the day named in the notice for hearing the motion:

Provided that in applications to answer the matters in an affidavit, or to strike off the rolls, the notice of motion shall be served on the parties not less than ten clear days before the time fixed by the notice for making the motion. [E. 700.] C. O. 21, R. 460.

Dismissal or adjournment where persons not served

592. If, on the hearing of a motion or other application, the court or a judge shall be of opinion that any person to whom notice has not been given ought to have or to have had such notice, the court or judge may either dismiss the motion or application or adjourn the hearing thereof, in order that such notice may be given, upon such terms (if any) as the court or judge may think fit to impose. [E. 701.] C. O. 21, R. 461.

Adjournment of hearing

593. The hearing of any motion or application may, from time to time, be adjourned upon such terms (if any) as the court or judge shall think fit. [E. 702.] C. O. 21, R. 462.

Deciding preliminary question

594. When on any application or motion in court or chambers, it appears to the court or a judge desirable that any question of law or fact should be first determined, before proceeding with the complete hearing of such application or motion, the court or a judge may direct such question to be first argued or determined upon such terms as to costs, adjournment, and otherwise as they or he deems proper, and upon the determination of such question the court or judge may either finally dispose of the motion, or application, or proceed with a further hearing thereof as may be proper. C. O. 21, R. 463.

Defendant not appearing to writ Service on notice on

595. The plaintiff shall, without any special leave, be at liberty to serve any notice of motion or other notice or any petition upon any defendant, who, having been duly served with a writ of summons to appear, has not appeared within the time limited for that purpose. C. O. 21, R. 463.

Service of notice of motion before appearance

596. The plaintiff may, by leave of the court or a judge to be obtained *ex parte,* serve any notice of motion upon any defendant along with the writ of summons, or at any time after service of the writ of summons and before the time limited for the appearance of such defendant. [E. 704.] C. O. 21, R. 465.

Enforcing return of writ or order by sheriff

597. No order shall issue for the return of any writ, or to bring in the body of any person ordered to be attached or committed; but a notice from the person issuing the writ, or obtaining the order for attachment, or committal (if not repre-

sented by a solicitor), or by his solicitor calling upon the sheriff to return such writ or to bring in the body within ten days, if not complied with, shall entitle such person to apply for an order for the committal of such sheriff. [E. 706.] C. O. 21, R. 466.

Date of orders

598. Every order, if and when drawn up, shall be dated the day of the week, month and year on which the same was made, unless the court or a judge shall otherwise direct, and shall take effect accordingly. [E. 708.] C. O. 21, R. 467.

Certain orders need not be drawn up

599. Where an order has been made not embodying any special terms, nor including any special directions, but simply enlarging time for taking any proceeding or doing any act or giving leave:

(*a*) For the issue of any writ other than a writ of attachment;

(*b*) For the amendment of any writ or pleadings;

(*c*) For the filing of any document; or

(*d*) For any act to be done by any officer of the court other than a solicitor;

(*e*) To stay proceedings until the hearing of a notice of motion;

it shall not be necessary to draw up such order unless the court or a judge shall otherwise direct; but the production of a note or memorandum of such order signed by a judge, local registrar or chamber clerk shall be sufficient authority for such enlargement of time, issue, amendment, filing, stay of proceedings or other act. A direction that the costs of such order shall be costs in any cause or matter shall not be deemed a special direction within the meaning of this rule. The solicitor of the person on whose application such order is made shall forthwith give notice in writing thereof to such person (if any) as would, if this rule had not been made, have been required to be served with such order. [E. 709.] C. O. 21, R. 468.

ORDER XLIII.

APPLICATIONS IN CHAMBERS.

I.—*By Originating Summons.*

Proceedings by originating summons

600. Proceedings commenced by originating summons in the supreme court of judicature in England may be so commenced under these rules, unless otherwise provided, and proceedings by a landlord to recover possession of demised premises from an overholding tenant may be so commenced. C. O. 21, R. 469 added to by 1903, Sess. 1, c. 8, s. 4.

Sealing and form

601. An originating summons shall be signed and sealed by the local registrar, and shall be in the form No. 79 or 80 in the appendix, with such variations as circumstances may require. It shall be prepared by the applicant or his solicitor, and when sealed shall be deemed to be issued. The person obtaining the summons shall leave with the local registrar a copy thereof which shall be filed. [E. Or. 54, R. 4*b*.]

Time for appearance

602. Unless otherwise ordered the time stated for an appearance to an originating summons shall be within twenty days from the service upon the defendant; unless by the summons a date is fixed for appearance before a judge in chambers in which case the summons shall be served ten clear days before the time fixed for appearance.

Service

603. All the rules relating to service of a writ of summons on a defendant, whether personal or substitutional, and whether within or without the jurisdiction, shall apply to the service of an originating summons.

Appearance to originating summons

604. The parties served with an originating summons shall, except as hereinafter provided, before they are heard enter an appearance at the office of the local registrar and give notice thereof. A party so served may appear at any time before the hearing of the summons. If he appears at any time after the time limited by the summons for appearance he shall not, unless the court or a judge shall otherwise order, be entitled to any further time for any purpose than if he had appeared according to the summons. [E. Or. 54, R. 4*c*.]

Attendance under originating summons

605. The day and hour for attendance under an originating summons shall, after appearance, be fixed by an appointment signed by the local registrar or chamber clerk. Such appointment shall be in form No. 81 in the appendix. The appointment shall be served on the defendant or respondent or his solicitor, not less than four clear days before the return day. Where the defendant or all of the defendants, if there are more than one, do not appear, the day and hour for the hearing of the summons shall be fixed by the local registrar or chamber clerk on production of the originating summons. [E. Or. 54, R. 4*d*.]

Judgment on originating summons

606. Upon proof by affidavit of the due service of the originating summons, or on the appearance in person or by solicitor of the parties served, and upon such evidence as the court or a judge may require, the court or a judge may pronounce such judgment as the nature of the case requires. [E. 770.] C. O. 21, R. 473.

Special directions as to judgment

607. The court or a judge may give any special directions touching the carriage or execution of the judgment, or the

service thereof, upon persons not parties as they or he may think just. [E. 771.] C. O. 21, R. 474.

II.—*Generally.*

Proceeding ex parte where party fails to attend

608. Where any of the parties to a notice of motion fail to attend, whether upon the return of the notice of motion, or at any time appointed for the consideration or further consideration of the matter, the judge may allow the case to proceed *ex parte,* if, considering the nature of the case, he thinks it expedient so to do; no affidavit of nonattendance shall be required or allowed, but the judge may require such evidence of service as he may think just. [E. 738.] C. O. 21, R. 476.

Adjournment to chambers

609. Whenever any matter is adjourned from the court to chambers or any directions are given in court to be acted upon in chambers, whether upon a matter adjourned into court from chambers, or upon any other occasion without an order being drawn up, a note signed by the local registrar, stating for what purpose such matter is adjourned to chambers, or the directions given, shall be procured from the local registrar and left at chambers. [E. 791.]

Reconsideration of ex parte proceedings

Costs

610. When the case has been allowed to proceed *ex parte,* such proceeding shall not in any manner be reconsidered in chambers, unless the judge shall be satisfied that the party failing to attend was not guilty of wilful delay or negligence; and in such case the costs occasioned by his nonattendance shall be in the discretion of the judge, who may fix the same at the time and direct them to be paid by the party or his solicitor before he shall be permitted to have such proceedings reconsidered, or make such order as to such costs as he may think just. [E. 739.] C. O. 21, R. 477.

Proceeding failing by nonattendance of party

611. When a proceeding in chambers fails by reason of the nonattendance of any party, and the judge does not think it expedient to proceed *ex parte,* the judge may order such an amount for costs (if any) as he shall think reasonable to be paid to the party attending by the absent party, or by his solicitor personally. [E. 740.] C. O. 21, R. 478.

Notices not disposed of on return, further attendance

612. When matters in respect of which notices of motion have been given are not disposed of upon the return of the notice, the parties shall attend from time to time without further notice, at such time or times as may be appointed for the consideration, or further consideration of the matter. [E. 741.] C. O. 21, R. 479.

Applications may include several matters Adjournment into court and into chambers

613. In every cause or matter where any party thereto makes any application at chambers he shall be at liberty to include in one and the same application all matters upon which he then desires the order or directions of the court or judge; and upon the hearing of such application, it shall be lawful for the court or judge to make any order and give any directions relative to or consequential on the matter of such application as may be just; any such application may, if the judge thinks fit, be adjourned from chambers into court, or from court into chambers. [E. 742.]

Form of summons

614. A notice of motion shall be in the form No. 82 in the appendix, with such variations as circumstances may require, and shall be addressed to all the persons on whom it is to be served. [E. 743.]

Notices of motion at what hour returnable

615. Unless a judge otherwise specially directs, notices of motion shall be returnable at 10.30 in the forenoon. [E. 759.]

List of motions

616. Each notice of motion shall, when filed, be entered by the proper officer in a list. [E. 760.]

Motions how called

617. The notices of motion on the list for hearing shall be called on in their order. If, when a motion is called on neither party appears, the motion shall be passed over until the list has been gone through. The motions passed over shall then be called on a second time in their order. If neither party appears to a motion so called on, it shall be struck out. [E. 761.]

Form of order

618. An order shall be in the forms No. 83-132 in the appendix with such variations as circumstances may require. It shall be sealed, and shall be marked with the name of the judge or local master by whom it is made. [E. 762.]

Chambers clerk

619. The local registrar at Regina, his deputy or a clerk, in his office to be called the chamber clerk, shall attend all judges' chambers held at Regina. He shall keep a minute of all proceedings in chambers, and of all orders granted. Such orders shall be settled by the chamber clerk, under the direction of the judge, and shall be prepared by the applicant or his solicitor, and shall be signed by such clerk and sealed with the seal of the local registrar at Regina, and when so sealed shall be deemed to be issued. All orders sealed with the seal aforesaid shall have force in every judicial district in the province. The person obtaining an order shall leave at the office of the local registrar a copy thereof, which shall be filed and stamped in the manner required by law.

(2) The registrar, local registrars, district court clerks, surrogate court clerks and employees, in their respective offices, are prohibited from attending to or transacting agency business of any character, except in respect to small-debt cases.

POWERS OF LOCAL MASTERS AT CHAMBERS.

Jurisdiction of local master

620. A local master, in regard to all actions brought or proposed to be brought in the supreme court in his judicial district, including proceedings in the nature of a *quo warranto* under *The Municipal Act*, may transact all such business and exercise all such authority and jurisdiction in respect to the same, as under *The Judicature Act*, or these rules may be transacted or exercised by a judge at chambers, except in respect to the following proceedings and matters, that is to say:

(*a*) All matters relating to criminal proceedings or the liberty of the subject;

(*b*) The quashing or reviewing any proceedings by means of a writ of certiorari;

(*c*) Appeals and applications in the nature of appeals and applications concerning the hearing of appeals;

(*d*) Applications by executors, administrators or trustees for advice;

(*e*) Proceedings in lunacy and with respect to the estates of lunatics;

(*f*) Applications with respect to the sale or other disposition of infants' estates, or matters affecting the custody of infants;

(*g*) Applications for prohibition, mandamus or injunctions:

Provided that a local master may, in cases of emergency, grant interlocutory injunctions in any action brought in his judicial district, on proof to his satisfaction that the delay required for an application to the court or a judge thereof is likely to involve failure of justice, such injunction to remain in force for such period not exceeding eight days as such local master may direct, unless continued by a judge;

(*h*) Staying proceedings after verdict, or on judgment after trial or hearing before a judge;

(*i*) Awarding of costs other than the costs of, or relating to, any proceeding before a master and other than costs which by the rules of court, or by the order of the court or a judge he is authorised to award;

(*j*) Granting final judgment of foreclosure or sale on originating summons, where the title to the land or the validity of the mortgage is in question, but in such case shall refer the summons to a judge to be dealt with. (E. 748.)

Reference by local master to Judge

621. If any matter appears to the local master proper for the decision of a judge, the master may refer the same to a

POWERS OF LOCAL MASTERS AT CHAMBERS.

Jurisdiction of local master

620. A local master, in regard to all actions brought or proposed to be brought in the supreme court in his judicial district, including proceedings in the nature of a *quo warranto* under *The Municipal Act,* may transact all such business and exercise all such authority and jurisdiction in respect to the same, as under *The Judicature Act,* or these rules may be transacted or exercised by a judge at chambers, except in respect to the following proceedings and matters, that is to say:

(*a*) All matters relating to criminal proceedings or the liberty of the subject;

(*b*) The quashing or reviewing any proceedings by means of a writ of *certiorari;*

(*c*) Appeals and applications in the nature of appeals and applications concerning the hearing of appeals;

(*d*) Applications by executors, administrators or trustees for advice;

(*e*) Proceedings in lunacy and with respect to the estates of lunatics;

(*f*) Applications with respect to the sale or other disposition of infants' estates, or matters affecting the custody of infants;

(*g*) Applications for prohibition, mandamus or injunctions:

Provided that a local master may, in cases of emergency, grant interlocutory injunctions in any action brought in his judicial district, on proof to his satisfaction that the delay required for an application to the court or a judge thereof is likely to involve failure of justice, such injunction to remain in force for such period not exceeding eight days as such local master may direct, unless continued by a judge;

(*h*) Staying proceedings after verdict, or on judgment after trial or hearing before a judge;

(*i*) Awarding of costs other than the costs of, or relating to, any proceeding before a master and other than costs which by the rules of court, or by the order of the court or a judge he is authorised to award;

(*j*) Granting final judgment of foreclosure or sale on originating summons, where the title to the land or the validity of the mortgage is in question, but in such case shall refer the summons to a judge to be dealt with. [E. 745.]

Reference by local master to judge

621. If any matter appears to the local master proper for the decision of a judge, the master may refer the same to a

judge, and the judge may either dispose of the matter or refer the same back to the master, with such directions as he may think fit. [E. 753.]

Appeal from decision of local master

622. Any person affected by any order, or decision of a local master, may appeal therefrom to a judge at chambers. Such appeal shall be by way of indorsement on the notice of motion by the master at the request of any party, or by notice in writing to attend before the judge, within eight days after the decision complained of, or such further time as may be allowed by a judge or master. Unless otherwise ordered, there shall be at least three clear days between service of the notice of appeal and the day of hearing. [E. 754.]

Appeal no stay of proceedings

623. An appeal from a local master's decision shall be no stay of proceedings, unless so ordered by a judge or local master. [E. 755.]

III.—*Administration and Trusts.*

Originating summons relating to express trusts or administration of estate of deceased person

624. The executors or administrators of a deceased person, or the sureties for administrators, and the trustees under any deed or instrument, or any of them, and any person claiming to be interested in the relief sought as creditor, devisee, legatee, next of kin, or heir-at-law of a deceased person, or as *cestui que trust* under the trust of any deed or instrument, or as claiming by assignment, or otherwise, under such creditor or other person as aforesaid, may obtain an originating summons returnable before a judge in chambers, at such time as he may appoint, for such relief of the nature or kind following as may by the summons be specified, and as the circumstances of the case may require, of any of the following questions or matters:

1. The administration of the estate of the deceased;

2. The administration of the trust;

3. Any question affecting the rights or interests of the person claiming to be creditor, devisee, legatee, next of kin, or heir-at-law, or *cestui que trust;*

4. The ascertainment of any class of creditors, legatees, devisees, next of kin, or others;

5. The furnishing and vouching of any particular accounts by executors, administrators or trustees;

6. The payment into court of any money in the hands of the executors, administrators or trustees;

7. Directing the executors, administrators or trustees to do or abstain from doing any particular act in their character as executors, administrators or trustees;

8. The approval of any sale, purchase, compromise or other transaction;

9. The determination of any question arising in the administration of the estate or trust;

10. An order that no action be brought, or that all actions and proceedings pending against trustees, executors or administrators be stayed for such period, as to the court or a judge may seem necessary or expedient, in order that sufficient time be allowed to such trustee, executor or administrator for the performance of the trusts imposed upon him: Staying actions pending performance of trusts

Provided, however, that any creditor or other person interested in such estate may apply, before the expiration of such time, for an order discontinuing such stay;

Provided that the proceedings under this rule shall not interfere with, or control, any power or discretion vested in any executor, administrator or trustee, except so far as such interference or control may necessarily be involved in the particular relief sought. [E. 765, 766 and 774.] C. O. 21, R. 481. Interference with discretion of trustee

625. The persons to be served with the summons, under the last preceding rule, shall be such persons as would be the proper defendants to an action for the like relief as that specified by the summons, and the summons shall be served upon such other persons as the court or a judge may direct, and the intended hearing may also be advertised in one or more newspapers as the court or a judge may order. [E. 767*b*.] C. O. 21, R. 482. Service of summons; Newspaper notice

626. The application shall be supported by such evidence as the court or a judge may require, and directions may be given as they or he may think just, for the trial of any questions arising thereout. [E. 769.] C. O. 21, R. 483. Evidence

627. It shall be lawful for the court or a judge, upon such summons, to pronounce such judgment and make such orders as the nature of the case may require. [E. 770.] C. O. 21, R. 484. Judgment on summons

628. The court or a judge may give any special directions touching the carriage or execution of the judgment or order, or the service thereof, upon persons not parties as they or he may think just. [E. 771.] C. O. 21, R. 485. Special directions

629. It shall not be obligatory on the court or a judge to pronounce or make a judgment or order, whether on summons or otherwise, for the administration of any trust or of the estate of any deceased person, if the questions between the parties can be properly determined without such judgment or order. [E. 772.] C. O. 21, R. 486. Administration not to be ordered if questions otherwise determinable

Powers of court if administration or trust accounts not rendered

630. Upon an application for administration or execution of trusts, by a creditor or beneficiary under a will, intestacy, or deed of trust, where no accounts or insufficient accounts have been rendered, the court or a judge may, in addition to the powers already existing:

(*a*) Order that the application shall stand over for a certain time, and that the executors, administrators, or trustees in the meantime shall render to the applicant a proper statement of their accounts, with an intimation that if this is not done, they may be made to pay the costs of the proceedings;

(*b*) When necessary to prevent proceedings by other creditors, or by persons beneficially interested, make the usual judgment or order for administration, with a proviso that no proceedings are to be taken under such judgment or order, without leave of the judge in person. [E. 772*a*.] C. O. 21, R. 487.

Appointment of new trustee and vesting order

631. Any of the following applications may be made by originating summons:

1. An application for the appointment of a new trustee with or without a vesting, or other consequential order;

2. An application for a vesting order or other order, consequential on the appointment of a new trustee, whether the appointment is made by the court or a judge or out of court. C. O. 21, R. 488.

Construction of written instruments

632. Any person claiming to be interested under a deed, will, or other written instrument may apply, by originating summons, for the determination of any question of construction arising under the instrument, and for a declaration of the rights of the persons interested.

Service

633. The court or a judge may direct such persons to be served with the summons as they or he think fit.

Evidence

634. The application shall be supported by such evidence as the court or a judge may require.

Powers of court or judge

635. The court or judge shall not be bound to determine any such question of construction if, in their or his opinion, it ought not to be determined on originating summons. [E. Or. 54*a*.]

Sale ordered of trust property

Conduct of sale

636. Whenever in an action for the administration of the estate of a deceased person, or execution of the trusts of a written instrument, a sale is ordered of any property vested in any executor, administrator, or trustee, the conduct of such

sale shall be given to such executor, administrator or trustee unless the court or a judge shall otherwise direct. [E. 666.] C. O. 21, R. 489.

Judge may obtain assistance of experts

637. The judge in chambers may in such way as he may think fit obtain the assistance of accountants, merchants, engineers, actuaries and other scientific persons the better to enable any matter at once to be determined, and he may act upon the certificate of any such person. [E. 781.] C. O. 21, R. 490.

Claimants not coming in to prove excluded

638. Where a judgment or order is given or made whether in court or in chambers directing an account of debts, claims, or liabilities, or an inquiry for heirs, next of kin, or other unascertained persons, unless otherwise ordered, all persons who do not come in and prove their claims within the time, which may be fixed for that purpose by advertisement, shall be excluded from the benefit of the judgment or order. [E. 806.] C. O. 21, R. 491.

Advertisement of time for proof of claims

639. The court or a judge may direct that notice of the time so fixed shall be given by publishing an advertisement thereof in some newspaper or newspapers in Saskatchewan as the court or judge may direct and unless otherwise directed no other notice thereof or service shall be necessary. C. O. 21, R. 492.

Signature of notice

640. Such notice if the order is made by the court shall be signed by the local registrar; if made by a judge in chambers it shall be signed by the chamber clerk. C. O. 21, R. 493.

Persons not proving claims within time excluded

641. Upon such notice being duly published, and such other notice given or published or served as the court or a judge may direct, all persons who do not come in and prove their claims within the time so fixed shall be excluded from the benefits of the judgment or order. [E. 806.] C. O. 21, R. 494.

Application by trustee, etc., or opinion and direction of court

642. Any trustee, guardian, executor, or administrator, may without the institution of a suit, upon a written statement verified on oath apply to the court or a judge in chambers, for the opinion, advice, or direction of such judge, on any question respecting the management or administration of the trust property or the assets of any testator or intestate, notice of such application to be served upon or the hearing thereof to be attended by all persons interested in such application or such of them as the judge shall think expedient, and the said trustee, guardian, executor or administrator, acting upon the opinion, advice, or direction, given by the said judge, shall be deemed so far as regards his own responsibility to have discharged his own duty as such trustee, guardian, executor, or administrator in the subject matter of the said application:

Exoneration of trustee, etc.

Fraud or concealment

Provided nevertheless that nothing in this rule shall extend to indemnify any trustee, guardian, executor, or administrator, in respect of any act done in accordance with such opinion, advice or direction, as aforesaid if such trustee, guardian, executor or administrator, shall have been guilty of any fraud or wilful concealment or misrepresentation in obtaining such opinion, advice or direction. C. O. 21, R. 495.

IV.—*Guardian ad litem.*

Infant or person of unsound mind Guardian ad litem

643. At any time during proceedings at chambers under any judgment or order, the judge may, if he shall think fit, appoint a guardian *ad litem* for an infant or person of unsound mind not already so found, who has been served with notice of such judgment or order. [E. 789.] C. O. 21, R. 496.

V.—*Varying Orders.*

Consent to discharge of order

644. The judge may set aside, vary, or discharge any order made by him on consent of all parties interested. C. O. 21, R. 497.

ORDER XLIV.

COURT EN BANC.

Adjournment if no quorum

645. If, on any of the days appointed for the sittings of the court *en banc* or adjournments thereof, a sufficient number of judges to constitute a quorum are not present, the chief justice or senior judge present shall make such adjournments as he may think proper. C. O. 21, R. 499.

Judgment by consent or as to costs, no appeal without leave

646. No judgment given, or order made by the court or a judge by the consent of parties, or as to costs only which by law are left to the discretion of the court or judge, shall be subject to any appeal except by leave of the court or judge giving the judgment or making the order. C. O. 21, R. 500.

Appeals, etc., by notice of motion

647. Every motion for a new trial or to set aside a verdict, finding or judgment, and all appeals shall be brought by notice of motion to the court sitting *en banc*. The notice shall state the grounds of the application, and whether all or part only of the verdict or finding, judgment or order is complained of, and in the latter case state such part. [E. 551, 553 and 865.]

Trial judge not to sit

648. No judge shall sit on the hearing of any motion for a new trial or appeal in any cause or matter tried before himself. [E. 552.]

649. The notice shall be served upon all parties directly affected, and it shall not be necessary to serve parties not so affected; but the court *en banc* may direct notice to be served on all or any parties to the action or other proceeding, or upon any person not a party, and in the meantime may postpone or adjourn the hearing of the motion for a new trial or appeal upon such terms as may be just, and may give such judgment and make such order as might have been given or made, if the persons served with such notice had been originally parties. Any such notice may be amended at any time as the court *en banc* may think fit. [E. 866.] Service of notice of appeal. Amendment.

650. A new trial shall not be granted on the ground of misdirection, or of the improper admission or rejection of evidence, or because the verdict of the jury was not taken upon a question which the judge at the trial was not asked to leave to them, unless, in the opinion of the court *en banc,* some substantial wrong or miscarriage has been thereby occasioned in the trial; and, if it appear to such court that such wrong or miscarriage affects part only of the matter in controversy, or some or one only of the parties, the court may give final judgment as to part thereof, or some or one only of the parties, and direct a new trial as to the other part only or as to the other party or parties. [E. 556.] Grounds for new trial.

651. A new trial may be ordered on any question, whatever be the grounds for the new trial, without interfering with the finding or decision upon any other question. [E. 557.] New trial of part of action.

652. No security for costs shall be required in applications for new trial or appeals, or motions in the nature of appeals, unless by reason of special circumstances such security is ordered by a judge, upon application to be made within fifteen days from the service of the notice of motion, application or appeal. C. O. 21, R. 502. Security for costs.

653. The notice of appeal shall be served within thirty days after the verdict where the application is for a new trial, and within thirty days after judgment in other cases; but the court or judge may either before, or after the expiration of such period, enlarge the time for giving notice:

Provided that in appeals from interlocutory orders the notice of appeal shall be served within fifteen days from the date of the order; but the court or judge may, in like manner, enlarge the time for giving such notice. C. O. 21, R. 504. Time for service of notice.

654. The court *en banc* shall have, in addition to all the powers and duties as to amendment, full discretion and power to receive further evidence upon questions of fact, such evidence to be either by oral examination in court, by affidavit, Powers of court en banc.

or by deposition taken before an examiner or commissioner. Such further evidence may be given without special leave upon interlocutory applications, or in any case as to matters which have occurred after the date of the decision from which the appeal is brought. Upon appeals from a judgment after trial, or hearing of any cause or matter upon the merits, such further evidence (save as to matters subsequent as aforesaid) shall be admitted on special grounds only, and not without special leave of the court. The court shall have power to draw inferences of fact, and to give any judgment and make any order which ought to have been made, and to make such further or other order as the case may require. The powers aforesaid may be exercised by the court, notwithstanding that the notice of appeal may be that part only of the decision may be reversed or varied; and such powers may also be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have appealed from or complained of the decision. The court shall have power to make such order as to the whole, or any part of, the costs of the appeal as may be just. [E. 868.]

New trial

655. If, upon hearing of an appeal, it shall appear to the court that a new trial ought to be had, it shall be lawful for the said court, if it shall think fit, to order that the verdict and judgment be set aside, and that a new trial shall be had. [E. 869.]

Notice by respondent of contention that order appealed from should be varied

656. It shall not, under any circumstances, be necessary for a respondent to give notice of motion by way of cross appeal; but, if a respondent intends, upon the hearing of the appeal, to contend that the decision of the court below should be varied, he shall within the time specified in the next rule, or such time as may be prescribed by special order, give notice of such intention to any parties who may be affected by such contention. The omission to give notice shall not diminish the powers conferred by the Act upon the court, but may, in the discretion of the court, be ground for an adjournment of the appeal, or for a special order as to costs. [E. 870.]

Length of notice by respondent

657. Subject to any special order which may be made, notice by a respondent under the last preceding rule shall, in the case of any appeal from a final judgment, be fourteen days' notice, and, in the case of an appeal from an interlocutory order, an eight days' notice. [E. 871.]

Appeal from refusal of ex parte applications

658. Where an *ex parte* application has been refused by the court below, an application for a similar purpose may be made to the next sittings of the court *en banc ex parte*. [874.]

659. When any question of fact is involved in an appeal or application for a new trial, the evidence taken in the court below or by the judge appealed from bearing on such question shall, subject to any special order, be brought before the court as follows: Evidence

1. As to any evidence taken by affidavit, by the production of copies of such affidavits;

2. As to any evidence given orally, by the production of copies of the judge's or stenographer's notes, or such other material as the court may deem expedient. [E. 875.]

660. If, upon the hearing of an appeal, a question arise as to the ruling or direction of the judge to a jury, the court shall have regard to verified notes or other evidence, and to such other materials as the court may deem expedient. [E. 877.] Questions as to ruling, etc., of judge in court below

661. No interlocutory order, or rule from which there has been no appeal, shall operate so as to bar or prejudice the court from giving such decision upon the appeal as may be just. [E. 878.] Interlocutory order not appealed from, not to prejudice decision

662. The following provisions shall apply to appeals to the court *en banc,* from decisions of the judges of the district courts: Appeals from district courts

(*a*) Every such appeal shall be by notice of motion, in accordance with rule 647, and such notice of motion shall be served and the appeal set down under rule 649, within the time limited by rule 653.

(*b*) It shall be the duty of the party appealing to apply to the judge of the district court for a signed copy of the notes made by him of any question of law raised before him, and of the facts in evidence in relation thereto, and of his decision thereon, and of his decision on the question or matter submitted to him and to furnish such copy for the use of the court *en banc,* together with four typewritten copies thereof, and of the pleadings in the cause, and such copies shall be used and received at the hearing of the appeal. If such notes are not produced, the court *en banc* shall have power to hear and determine the appeal, upon any other evidence or statement of what occurred before the judge of the district court which the court *en banc* may deem sufficient.

(*c*) The appeal shall not operate as a stay of proceedings under the decision appealed from, unless the district court shall so order, or unless within ten days after the decision a deposit shall be made of or security given to the satisfaction of such district court for a sum to be fixed by the said court, not exceeding the amount of the money or the value of the property affected by the judgment, order or finding appealed from.

(*d*) The supreme court *en banc,* or a judge thereof, shall have power to extend the time for appealing, or to amend the grounds of appeal, or to make any other order, on such terms as the court or judge shall think just, to ensure the determination on the merits of the real questions in controversy between the parties.

(*e*) No factums shall be required.

(*f*) Subject to the foregoing provisions, the rules for the time being in force with respect to appeals from the supreme court to the court *en banc* shall, so far as practicable, apply to and govern appeals from the district courts to the court *en banc.* [E. Or. 58, R. 20 and Or. 59, R. 14 and 16.]

Appeal no stay except by order

663. No notice of appeal, or notice of motion for a new trial, shall operate as a stay of execution or of proceedings under the decision appealed from or objected to, except so far as the judge appealed from or the court may order, and no intermediate act or proceedings shall be invalidated except so far as the court may direct. Such deposit or other security shall be made or given as may be directed by the court or judge, otherwise the motion of appeal shall not be heard but be dismissed. [E. 880.]

Application to court below

664. Wherever under the rules an application may be made either to the court below, or to the court *en banc,* or to a judge of the court below, or of the court *en banc,* it shall be made in the first instance to the court or judge below. [E. 881.]

Order nominating judge to act in place of one who has died or retired

665. Where an application ought to be made to, or any jurisdiction exercised, or any act done by the judge by whom a cause or matter has been tried or heard, if such judge die or cease to be a judge of the court or if, for any other reason, it shall be impossible or inconvenient that such judge should act in the matter, the presiding judge may either by a special order in any cause or matter, or by a general order applicable to any class of orders or matters, nominate some other judge to whom such applications may be made or by whom such jurisdiction may be exercised. [E. 885.]

Appeals to be entered and motions made at first opportunity

666. A judgment, order, decision, rule or verdict appealed from or sought to be set aside, shall stand as if no notice of appeal or notice of motion to set the same aside has been made or given, if the cause or matter in which the same was made or given be not entered for argument within the time limited for filing the appeal book, or if the motion of which notice has been given be not made when the cause or matter is called, unless such default in the moving party be waived by the other parties interested, or unless the court shall otherwise order. C. O. 21, R. 515.

Single judge may deliver judgment of court or other judge

667. Any judge may deliver the judgment of the court, when authorised to do so by the judges *en banc* who heard the matter on which judgment is to be pronounced, or may deliver the judgment of any other judge when authorised to do so by such other judge, notwithstanding the absence of the judge or judges aforesaid. C. O. 21, R. 516.

Appellant to file and deliver printed copy of appeal book

668. Unless otherwise ordered by a judge, on every application for a new trial, appeal or motion in the nature of appeal in the court *en banc,* the party moving or appealing shall, except in cases of appeals from judgments or orders made in interlocutory applications, or in proceedings at chambers, file with the registrar a printed copy of the statement of claim and defence and other pleadings (if any) of the judge's (or stenographer's) notes on trial, of the judgment delivered and of the notice of the motion intended to be made in the cause; and in cases of appeals from judgments or orders made in interlocutory applications, or in proceedings at chambers, the party appealing shall file with the registrar a printed copy of the documents, evidence and other material used before the judge, of the judgment delivered and of the notice of appeal. [C. R. 1.]

Appeal book

669. Such printed copy shall be known as the appeal book, shall be entitled in the original style of cause, and unless otherwise ordered by a judge, shall be filed at least ten days before the opening of the sittings, whereat the motion is to be made or the appeal heard, and shall be certified by the local registrar of the court in which the proceedings were had, under the seal of such court in the following form:

In the Supreme Court of Saskatchewan.
Judicial District of.....

Certificate of registrar

I, the undersigned local registrar of the supreme court of Saskatchewan, in and for the judicial district of....., hereby certify to the registrar of the supreme court that the aforegoing document is a true copy of the statement of claim and defence and the pleadings in this cause, the judge's (or stenographer's) notes taken on the trial as furnished me by the judge (or stenographer), the judgment delivered and the notice of motion to the court filed with me, that the action was commenced in this court on (*or in case of appeals from judgments or orders made in interlocutory applications or proceedings at chambers,* that the aforegoing document is a true copy of the documents, evidence and other material used before the judge on an application, *shortly stating the nature of the application,* of the judgment delivered thereon and of the notice of appeal filed with me). That this appeal book has been approved by the solicitors (*or* settled by the court, *as the case may be*) that the

filed the said notice on A.D. (*and if security has been ordered, add*—and that the security required by the order hereon of the day of A.D.), for such motion (*or* appeal, *as the case may be*) has been deposited with me.

Dated the day of A.D. . [C. R. 2.]

Number of appeal books to be filed

670. The appellant or applicant shall, unless otherwise ordered by a judge, at the time of so filing the appeal book, deposit five copies thereof with the registrar for the use of the judges. [C. R. 3.]

Apeal book to be approved before printing

671. The appeal book in draft form shall, before printing, be submitted to the solicitor for the respondent, who shall, if he approves thereof, return the same within four days to the solicitor for the appellant, marked "approved;" but, if the said solicitor cannot agree on the contents of the appeal book, the same shall be settled by a judge on application by the solicitor for the appellants upon notice to the opposite side. [C. R. 4.]

How printed

672. The appeal book, and copies for the judges, shall be printed on only one side of the paper, and they shall also be printed on paper of good quality and in demy-quarto form, with small pica type, leaded, and every tenth line in each page shall be numbered in the margin, the numbering to be from the top of each page and not from the beginning of the book, and the size of the book shall be 11 inches in height and 8½ inches in width, and they shall be bound so that the printed matter shall be on the left hand side. [C. R. 5.]

(2) If the appellant desires, the appeal book may be printed according to the regulations as to form and type in appeals to the supreme court of Canada.

Not to be filed unless rules complied with

673. The registrar shall not file the book, or receive the copies thereof, without the leave of a judge, if the preceding rule has not been complied with. [C. R. 6.]

If proof not properly corrected cost of printing may be disallowed

674. If the proof has not been carefully corrected, the court may disallow the cost of printing, or may decline to hear the appeal or motion and make such order as to postponement and payment of costs as may seem just. And in cases where, by order of a judge, the filing and depositing of a printed book and copies is dispensed with, and the appellant is allowed to file and deposit a written book and copies, or a book and copies written with a typewriter; if, in the opinion of the court the writing is illegible, or so slovenly or carelessly done as not to be reasonably legible or comprehended, the court may disallow the cost of such book and copies, or of any

part thereof, or may decline to hear the appeal, and may make such order as to postponement and payment of costs as may seem just. [C. R. 7.]

675. The appellant shall, not less than ten days before the sittings of the court whereat the motion is to be made or the appeal heard, deliver to the opposite party two printed copies of such appeal book. [C. R. 8.] Copies of appeal book to be delivered to opposite party

FACTUMS.

676. In all matters in which an appeal book is now required by the rules of the court to be filed with the registrar, the parties appellant and respondent shall, at least five days before the opening of the sittings at which the same is to be dealt with, deposit with the registrar, or cause to be received by him by mail, a factum or statement of his points of argument before the court, and five copies thereof for the use of the court. [C. R. 9.] Factum to be deposited

677. The factum shall contain a concise statement of the facts and of the points of law intended to be relied upon, and of the arguments and authorities to be urged and cited at the hearing, arranged under appropriate heads. [C. R. 10.] Factum, what to contain

678. The factum and copies may be printed or typewritten so as to be plainly legible, and on one side only of the paper, the size of the paper to be not less than 11 inches in height and 8½ inches in width, and to be bound so as to have the reading matter on the left hand side. [C. R. 11.] Factum may be printed or typewritten

679. The factum and copies first received from either party by the registrar shall be kept under seal, and shall not be communicated to the other party until after receipt of the factum of such other party. [C. R. 12.] Registrar to keep first copies received under seal

680. The registrar shall not accept any factum or copy which is not in substantial accordance with these rules. [C. R. 13.] Registrar not to accept factums if not in accordance with rules

681. So soon as the factums of both parties shall have been received by the registrar, each party shall, at the request of the other, deliver to him one copy of his said factum. [C. R. 14.] Parties to deliver factums to opponents

682. In default of compliance by either party with these rules as to factums, the court *en banc* may, when the matter comes before it, refuse to hear the party so in default, or may impose such terms upon him as it may deem just. Court may refuse to hear party whose factum not in accordance with rules

Registrar to report such default

683. It shall be the duty of the registrar, on the opening of the court, to report to it any such default. [C. R. 15.]

Judge may dispense with delivery of factums

684. On the application by either party to a judge an order may, in his discretion, be made dispensing with the delivery of factums by either or both parties, or varying the time for such delivery to the registrar. [C. R. 16.]

Factum not to contain irrelevant matter

685. A factum shall not contain irrelevant matter, nor reproduce matter which should appear in the appeal book where a reference to it will reasonably suffice. The penalty for a breach of this rule shall be nonallowance on taxation of costs, for such irrelevant or other prohibited matter. [C. R. 17.]

Court may permit counsel to use arguments not in factum

686. While it is required that the factum shall contain in brief all the facts, points of arguments and authorities to be relied upon by the party delivering it, the court may in its discretion and upon such terms (if any) as it deems just, permit counsel to use arguments, raise points of law and cite authorities not mentioned in the factum. [C. R. 18.]

Local registrar may be directed to produce original papers

687. In any case intended to be brought before the court, in which in the opinion of either side of the parties interested, it is considered necessary that any original papers or documents on file in the local registrar's office should be in the court, on an *ex parte* order of a judge, directing him to do so, the local registrar shall transmit the same, either by express or registered post, to the registrar. [C. R. 19.]

Appeal, etc., to be inscribed on list

688. All appeals, motions for new trials, applications in the nature of appeals, matters referred to the court by a judge and special matters for argument before the court shall, before the opening of the court on the first day of each term, be entered or inscribed by the registrar on a list to be kept by him, such entries in the case of appeals, motions for new trials, and applications in the nature of appeals, to be so made in the order in which the appeal books are filed except appeals from district courts which shall be entered first on such list; in other cases in the order in which application is made, to enter or inscribe them, and the causes so inscribed will be taken up after common motions in the order in which they are so entered, unless otherwise ordered by the court. [C. R. 20.]

Common motions

689. The foregoing rules shall not apply to common motions. [C. R. 21.]

First day a common motion day

690. The first day of the sittings of the court shall be a common motion day; common motions may, however, be heard at any other time during the sittings by leave of the court. [C. R. 22.]

691*a*. Additional sittings of the supreme court for the trial of nonjury cases are appointed to be held at Regina at ten o'clock in the forenoon at the following times in each year:

On the second Tuesday after the Christmas vacation, the second Tuesdays in February, April and May, the third Tuesday in October and the second Tuesday in December.

ORDER XLV.

SITTINGS AND VACATIONS.

Sittings of single judges

691. Sittings of the court presided over by a single judge shall be held at ten o'clock in the forenoon, at the following times and places in each and every year, and for the purposes stated herein:

REGINA—On the fourth Tuesdays in January, May and September, for jury trials.

SASKATOON—On the fourth Tuesdays in January, May and September, for jury trials.

MOOSE JAW—On the fourth Tuesdays in January, May and September, for non-jury trials.

REGINA—On the second Tuesday in March, the first Tuesday in June, and the third Tuesday in November, for non-jury trials.

SASKATOON—On the second Tuesday in March, the first Tuesday in June, and the third Tuesday in November, for non-jury trials.

MOOSE JAW—On the second Tuesday in March, the first Tuesday in June, and the third Tuesday in November, for jury trials.

MAPLE CREEK—On the third Tuesday in March.

BATTLEFORD—On the second Tuesdays in April and November.

PRINCE ALBERT—On the fourth Tuesdays in April and November.

MOOSOMIN—On the fourth Tuesday in April and the first Tuesday in October.

YORKTON—On the first Tuesdays in May and December.

ARCOLA—On the second Tuesdays in May and December.

Sittings of court en banc

692. The sittings of the court *en banc* shall be three in every year, viz., on the last Tuesdays of February, June and October.

Vacations

693. The vacations to be observed in the several courts and the offices of the supreme court, shall be two in every year, viz., the long vacation and the Christmas vacation. The long vacation shall commence on the 16th of July, and terminate on the 15th of September; the Christmas vacation shall commence on the 24th of December, and terminate on the 6th of January.

During long vacation no contested business shall be transacted, and neither party to a suit in which an appearance has been entered shall be compelled to deliver any pleading. If the time for delivering a pleading in a cause, in which the defendant has appeared, has not expired previous to the 16th of July, it shall, without any order to that effect, stand

extended until the expiration of five days after the last day of vacation:

Provided that notice of trial, and notice of appeal to the court *en banc,* may be given during vacation. [549.]

Short vacation not to count

694. The time of the short vacation in any year shall not be reckoned in the computation of the times appointed or allowed by these rules for amending, delivering or filing any pleading, unless otherwise directed by the court or a judge. [E. 965.]

Exceptions

695. Nothing in the two preceding rules contained shall prevent the issue of process, or the transaction of any business which may be done *ex parte,* or the entering of judgment by default in any suit in which no appearance is entered, or the taxation of costs or the preparing of appeal books or entering the appeal with the registrar, or interfere with the hearing during vacation of any cause or matter if a judge so directs, nor shall this rule affect the validity of any proceedings had or taken during vacation, by order of the court or a judge authorising such proceedings to be had or taken notwithstanding the vacation. No. 6 of 1893, s. 559; No. 5 of 1894, s. 23.

Offices, when to be open

696. The offices of the supreme court shall be open on every day of the year, excepting Sundays and statutory holidays.

Office hours

697. The office hours of the several offices of the supreme court shall be from ten in the forenoon to four in the afternoon, except on Saturdays, and in vacations, when the offices shall close at one in the afternoon.

Vacation judge

698. Two of the judges of the supreme court shall be selected at the commencement of each long vacation for the hearing in Regina, during the vacation, of all such applications as may require to be immediately or promptly heard. Each of such judges shall act as vacation judge for one month during the year of his appointment. [E. 955.]

Order of vacation judge not to be reversed

699. No order made by a vacation judge shall be reversed or varied except by the court *en banc,* or the judge who made the order. Any other judge of the supreme court may sit in vacation for any vacation judge. [E. 956.]

ORDER XLVI.

TIME.

"Month" means calendar months

700. Where by these rules, or by any judgment or order given or made after the commencement of the Act, time for doing any act or taking any proceeding is limited by months,

and where the word "month" occurs in any document, which is part of any legal procedure under these rules, such time shall be computed by calendar months, unless otherwise expressed. [E. 961.]

Exclusion of Sundays, etc.

701. Where any limited time less than six days from or after any date or event is appointed or allowed for doing any act or taking any proceeding, the days on which the offices are closed under the provisions of these rules shall not be reckoned in the computation of such limited time. [E. 962.] C. O. 21, R. 546.

Time expiring on Sunday or close day

702. Where the time for doing any act or taking any proceeding expires on a Sunday, or other day on which the offices are closed, and by reason thereof such act or proceeding cannot be done or taken on that day, such act or proceeding shall, so far as regards the time of doing or taking the same, be held to be duly done or taken if done or taken on the day on which the offices shall next be open. [E. 963.] C. O. 21, R. 547.

Time for giving security for costs When not to be reckoned

703. The day on which an order for security for costs is served, and the time thenceforward until and including the day on which such security is given, shall not be reckoned in the computation of time allowed to plead, or take any other proceedings in the cause or matter. [E. 966.]

Power of court or judge to enlarge or abridge time

704. The court or a judge shall have power to enlarge or abridge the time appointed by these rules, or fixed by any order enlarging time for doing any act or taking any proceeding, upon such terms (if any) as the justice of the case may require; and any such enlargement may be ordered, although the application for the same is not made until after the expiration of the time appointed or allowed. [E. 967.] C. O. 21, R. 548.

Enlargement of time by consent

705. The time for delivering, amending, or filing any pleading, answer, or other document may be enlarged by consent in writing, without application to the court or a judge. [E. 968.]

Time of day for service

706. Service of pleadings, notices, orders, rules and other proceedings shall be effected before the hour of six in the afternoon, except on Saturdays, when it shall be effected before the hour of one in the afternoon. Service effected after six in the afternoon on any week day, except Saturday shall, for the purpose of computing any period of time subsequent to such service, be deemed to have been effected on the following day. Service effected after one in the afternoon on Saturday shall for the like purpose be deemed to have been effected on the following Monday. [E. 971.] C. O. 21, R. 544.

Number of days, how computed

707. In any case in which any particular number of days, not expressed to be clear days, is prescribed by these rules, the same shall be reckoned exclusively of the first day and inclusively of the last day. [E. 972.] C. O. 21, R. 545.

Length of notice after delay of one year

708. In any cause or matter in which there has been no proceeding for one year from the last proceeding had, the party who desires to proceed shall give a month's notice to the other party of his intention to proceed. A notice of motion on which no order has been made shall not, but notice of trial, although countermanded, shall be deemed a proceeding within this rule. [E. 973.]

ORDER XLVII.

I.—*Costs.*

Costs generally in discretion of court

709. Subject to the provisions of *The Judicature Act* and these rules the costs of, and incident to, all proceedings in the supreme court, including the administration of estates and trusts and compensation or allowance to any executor, administrator, guardian, committee, receiver or trustee, shall be in the discretion of the court or judge:

Proviso as to trustees

Provided that nothing herein contained shall deprive an executor, administrator, trustee or mortgagee who has not unreasonably instituted or carried on, or resisted, any proceedings of any right to costs out of a particular estate or fund to which he would otherwise be entitled;

Costs where cause tried by jury

Provided also that where any action, cause, matter or issue is tried with a jury the costs shall follow the event, unless the judge by whom such action, cause, matter or issue is tried or the court shall for good cause otherwise order. [E. 976.] C. O. 21, R. 517.

Costs of issues

710. When issues in fact and law are raised upon a claim or counterclaim, the costs of the several issues respectively, both in law and fact shall, unless otherwise ordered, follow the event. And an order giving a party costs, except so far as they have been occasioned or incurred by, or relate to, some particular issue or part of his proceedings shall be read and construed as excluding only the amount by which the costs have been increased by such issue or proceedings; but the court or judge, if the whole costs of the action or other proceedings are not intended to be given to the party may, whenever practicable, by order direct taxation of the whole costs and payment of such proportion thereof, as the court or judge shall determine. [E. 977.]

711. If a cause be removed from the district court having jurisdiction in the cause, the costs of the court below shall be costs in the cause. [E. 978.] Cause removed from district court

712. Where, upon the trial of any cause or matter, it appears that the same cannot reasonably proceed by reason of the solicitor for any party having neglected to attend personally, or by some proper person on his behalf, or having omitted to deliver any paper necessary for the use of the court or judge, and which according to the practice ought to have been delivered, such solicitor shall personally pay to all or any of the parties such costs as the court or judge shall think fit to award. [E. 980.] When trial cannot proceed from neglect of solicitor to attend

713. Where the court or judge appoints a solicitor to be guardian *ad litem* of an infant, or person of unsound mind, the court or judge may direct that the costs to be incurred in the performance of the duties of such office shall be borne and paid, either by the parties or some one or more of the parties to the cause or matter in which such appointment is made, or out of any fund in court in which such infant or person of unsound mind may be interested, and may give directions for the repayment or allowance of such costs, as the justice and circumstances of the case may require. [E. 988.] C. O. 21, R. 519. Costs of solicitor guardian ad litem

II.—*Security for Costs.*

714. When the plaintiff in an action resides out of the province and in any other case where, by the practice and procedure in England, a defendant is entitled to security for costs and the defendant, by affidavit of himself or his agent, alleges that he has a good defence on the merits to the action, the defendant shall be entitled to serve a notice of motion on the plaintiff, to show cause why an order should not issue requiring the plaintiff within three months (or such other or further time as the court or judge may deem right) from the service of the order, to give security for the defendant's costs and staying all further proceedings in the meantime, and directing that, in default of such security being given, the action be dismissed with costs unless the court or judge, on special application for that purpose, shall otherwise order. C. O. 21, R. 520. Summons for security for costs

715. In any cause or matter in which security for costs is required, the security shall be of such amount and be given at such times, and in such manner and form, as the court or judge may direct. [E. 981.] C. O. 21, R. 521. Time and manner of giving security

716. Where a bond is given as security for costs it shall, unless the court or judge shall otherwise direct, be given to the party or person requiring the security, and not to an officer of the court. [E. 982.] C. O. 21, R. 522. Obligee where bond given

III.—*Taxation and Tariffs of Costs.*

Taxation of costs unless lump sum ordered

717. In all causes and proceedings, as also upon interlocutory applications, where a party becomes entitled to costs from any other party, the same shall be taxed by the local registrar in accordance with the fees set forth in schedule No. 1 of the tariff of costs, unless the court or judge by order directs the payment of a sum in gross in lieu of taxed costs, and by and to whom such sum in gross shall be paid. C. O. 21, R. 523.

Sheriff's and local registrar's fees

718. There shall be paid to the registrar, each sheriff and local registrar, the fees set forth in schedule No. 2 of the tariff of costs; and, for any necessary services performed for which fees are not so prescribed, such fees as may be authorised by a judge. C. O. 21, R. 524.

Cases where solicitor may be deprived of or ordered to pay costs

719. If, in any case, it shall appear to the court or a judge that costs have been improperly or without any reasonable cause incurred, or that by reason of any undue delay in proceeding under any judgment or order, or of any misconduct or default of the solicitor, any costs properly incurred have nevertheless proved fruitless to the person incurring the same, the court or judge may call on the solicitor or the person by whom such costs have been so incurred, to show cause why such costs should not be disallowed as between the solicitor and his client, and also (if the circumstances of the case shall require) why the solicitor should not repay to his client any costs which the client may have been ordered to pay to any other person, and thereupon may make such order as the justice of the case may require. [E. 986.] C. O. 21, R. 525.

Costs improperly or fruitlessly incurred

720. The court or judge may, if they or he think fit, refer the matter to the local registrar for inquiry and report; and direct the solicitor in the first place to show cause, before such local registrar, and may also, if they or he think fit, direct or authorise the solicitor of the law society to attend and take part in such inquiry. Such notice (if any) of the proceedings, or order, shall be given to the client in such manner as the court or judge may direct. Any costs of the solicitor of the law society shall be paid by such parties, or out of such funds as the court or a judge may direct. [E. 986.]

Where not exceeding $300 recovered in action

721. In actions in which the plaintiff recovers, by judgment or otherwise, a sum (exclusive of costs) not exceeding $500, he shall be entitled to no more costs than he would have been entitled to had he brought his action in a district court, unless the court or a judge otherwise orders, and unless the court or judge shall otherwise order, the defendant shall be entitled to tax his costs of defence, and so much thereof

as exceed the taxable costs of defence, which would have been incurred had the proceedings been had in the district court shall, on entering judgment, be set off and allowed by the local registrar against the plaintiff's costs to be taxed, or against such costs and the amount of the judgment, if it be necessary; and, if the amount of the costs to be set off exceeds the amount of the plaintiff's judgment and taxed costs, the defendant shall be entitled to judgment for the excess against the plaintiff; but, where a defendant in any such action becomes entitled to tax costs against the plaintiff, such defendant shall be entitled to costs on the supreme court scale. C. R. 95.

Costs of solicitor guardian ad litem

722. Where the court, or a judge, appoints one of the solicitors of the court to be guardian *ad litem* of an infant or person of unsound mind, the court or judge may direct that the costs to be incurred in the performance of the duties of such office shall be borne and paid either by the parties, or some one or more of the parties to the cause or matter in which such appointment is made, or out of any fund in court in which such infant, or person of unsound mind, may be interested; and may give directions for the repayment or allowance of such costs as the justice and circumstances of the case may require. [E. 988.]

Set-off for damages or costs

723. A set-off for damages or costs between parties may be allowed notwithstanding the solicitor's lien for costs in the particular cause or matter in which the set off is sought. [E. 989.]

Costs out of estate

724. The costs occasioned by any unsuccessful claim, or unsuccessful resistance to any claim to any property, shall not be paid out of the estate unless the judge shall otherwise direct. [E. 989*a*.]

Costs as regards particular shares

725. The costs of inquiries to ascertain the person entitled to any legacy, money, or share, or otherwise incurred in relation thereto, shall be paid out of such legacy, money or share, unless the judge shall otherwise direct. [E. 989*b*.]

Distribution not to be delayed by difficulties as to some shares

726. Where some of the persons entitled to a distributive share of a fund are ascertained, and difficulty or delay has occurred, or is likely to occur, in ascertaining the persons entitled to the other shares, the court, or a judge, may order or allow immediate payment of their shares to the persons ascertained, without reserving any part of those shares to answer the subsequent costs of ascertaining the persons entitled to the other shares; and in all such cases such order may be made for ascertaining and payment of the costs incurred, down to, and including, such payment as the court or judge shall think reasonable. [E. 989*c*.]

Costs on an award

727. Costs may be taxed on an award, notwithstanding the time for setting aside the award has not elapsed. [E. 990.]

Notice of taxing costs and copy bill

728. One day's notice of taxing costs, together with a copy of the bill of costs and affidavit of increase (if any), shall be given by the solicitor of the party, whose costs are to be taxed to the other party or his solicitor, in all cases where a notice to tax is necessary. [E. 991.] C. O. 21, R. 526.

Where such notice unnecessary

729. Notice of taxing costs shall not be necessary in any case where the defendant has not appeared in person, or by his solicitor or guardian. [E. 992.] C. O. 21, R. 527.

Forms of bills of costs

730. In every bill of costs, the professional charges shall be entered in a separate column from the disbursements, and every column shall be cast before the bill is left for taxation. [E. 994*b*.]

Gross sum for costs on interlocutory applications

731. Upon interlocutory applications, where the court or a judge shall think fit to award costs to any party, the court or judge may, by the order, direct payment of a sum in gross in lieu of taxed costs, and direct by and to whom such sum in gross shall be paid. [E. 998.]

Application for review of taxation

732. Any party who may be dissatisfied with the allowance, or disallowance, by the taxing officer in any bill of costs taxed by him of the whole, or any part of the item or items may, within ten days and on two days' notice to the opposite party, specifying the item or items objected to, apply to a judge in chambers to review the taxation. C. O. 21, R. 528.

Evidence on review

733. Such application shall be heard and determined by the judge, upon the evidence which shall have been brought in before the taxing officer, and no further evidence shall be received unless the judge shall otherwise direct. C. O. 21, R. 529.

Witnesses', jurors' and interpreters' fees

734. Witnesses, jurors, interpreters and parties, when appearing as witnesses, shall be entitled to the fees and remuneration set out in schedule No. 3 of the tariff of costs. C. O. 21, R. 531.

Fees payable in advance

735. All fees and allowances respectively, payable under schedule No. 2 of the tariff of costs, whether under writs of execution or otherwise, shall be paid in advance by the parties at whose instance the service is to be rendered; but, in cases where the amounts are impossible of ascertainment, for any reason then the amount approximated by the officer or fixed by a judge, shall be deposited or paid to be accounted for when the correct amount is ascertained. C. O. 21, R. 532.

apl-2-1918: in force Mar 21, 1918.

736. In all causes and matters in which duly enrolled solicitors as such and resident in Saskatchewan are employed, they shall be entitled to charge on the taxation of costs between party and party and shall be allowed such fees as are set out in Schedule No. 1 of the tariff of costs, and between solicitor and client, such solicitors shall be entitled to charge and shall be allowed such higher, further or other fees exclusive of counsel fees as the taxing officer shall in his discretion allow, subject however to an appeal to a Judge in Chambers, and as to counsel fees such further fees as may be allowed on application to a Judge in Chambers. C.O. 21, R. 533. R.S.C. 1911, 736. Solicitors' fees

Rule 736 is hereby repealed and the following substituted therefor:

736. In all causes and matters in which duly enrolled solicitors holding certificates as such and resident in Saskatchewan are employed, they shall be entitled to charge on the taxation of costs between party and party and shall be allowed such fees as are set out in Schedule No. 1 of the tariff of costs, and between solicitor and client, such solicitors shall be entitled to charge and shall be allowed such higher, further or other fees exclusive of counsel fees as the taxing officer shall in his discretion allow, subject however to an appeal to a Judge in Chambers, and as to counsel fees such further fees as may be allowed on application to a Judge in Chambers. C.O. 21, R. 533. R.S.C. 1911, 736.

737. The following special allowances and general regulations shall apply to all proceedings and all taxations in the supreme court:

1. The allowances for instructions and drawing special affidavits, and attending the deponent to be sworn, include all attendances on the deponent to settle and read over; Drawing affidavits and attending deponent

2. As to delivery of pleadings, services, and notices, the fees are not to be allowed when the same solicitor is for both parties, unless it be necessary for the purpose of making an affidavit of service; Delivery of pleading, etc.

3. As to perusals, the fees are not to apply where the same solicitor is for both parties; Perusals

4. Where the same solicitor is employed for two or more defendants, and separate pleadings are delivered or other proceedings had by, or for, two or more such defendants separately, the taxing officer shall consider in the taxation of such solicitor's bill of costs, either between party and party, or between solicitor and client, whether such separate pleadings or other proceedings were necessary or proper; and, if he is of opinion that any part of the costs occasioned thereby has been unnecessarily or improperly incurred, the same shall be disallowed; Separate answers or proceedings by the same solicitor

5. As to evidence taken on commission, or on an order for examination or for discovery beyond the jurisdiction of the court, such just and reasonable charges and expenses as appear to have been properly incurred in procuring evidence, and the attendance of witnesses, are to be allowed; Evidence

6. As to attendances at the judge's chambers, where by reason of the nonattendance of any party (unless it be considered expedient to proceed *ex parte*) or where by reason of the neglect of any party in not being prepared with any proper evidence, account, or other proceeding, the attendance is adjourned without any useful progress being made, the judge may order such an amount of costs (if any) as he shall think reasonable to be paid to the party attending by the party so absent or neglectful, or by his solicitor personally and the party so absent or neglectful, is not to be allowed any fee as against any other party, or any estate or fund in which any other party is interested; Nonattendance or neglect of parties on proceedings in chambers

Folio to be 100 words

7. A folio is to comprise one hundred words, every figure comprised in a column, or authorised to be used, being counted as one word;

Inspection of documents under

8. As to inspection of documents under order XXII, rule 269, no allowance is to be made for any notice or inspection, unless it is shown to the satisfaction of the taxing officer that there were good and sufficient reasons for giving such notice and making such inspection;

Copies of documents, allowance of 10c per folio, except where solicitor refuses production

9. As to taking copies of documents in possession of another party, or extracts therefrom, under rules of court or any special order, the party entitled to take the copy or extract is to pay the solicitor of the party producing the document for such copy or extract, as he may, by writing, require, at the rate of 10 cents per folio; and, if the solicitor of the party producing the document refuses, or neglects to supply the same, the solicitor requiring the copy or extract is to be at liberty to make it, and the solicitor for the party producing is not to be entitled to any fee in respect thereof;

Disallowance of costs, improper, vexatious or unnecessary matter in documents or proceedings

10. The court or judge may, at the hearing of any cause or matter, or upon any application or proceeding in any cause or matter in court or at chambers, and whether the same is objected to or not, direct the costs of any pleading, summons, affidavit, evidence, notice to produce, admit, or cross examine witnesses, procuring discovery, applications for time, bills of costs, service of notice of motion or other proceeding, or any part thereof, which is improper, vexatious, unnecessary, or contains vexatious or unnecessary matter, or is of unnecessary length, or caused by misconduct or negligence to be disallowed, or may direct the taxing officer to look into the same and to disallow the costs thereof, or of such part thereof as he shall find to be improper, unnecessary, vexatious, or to contain unnecessary matter, or to be of unnecessary length, or caused by misconduct or negligence; and in such case the party, whose costs are so disallowed, shall pay the costs occasioned thereby to the other parties; and in any case where such question shall not have been raised before, and dealt with by the court or judge, it shall be the duty of the taxing officer to look into the same (and, as to evidence, although the same may be entered as read in any decree or order) for the purpose aforesaid, and thereupon the same consequences shall ensue as if he had been specially directed to do so;

Set off of costs

11. In any case in which, under the last preceding regulation, or any other rule of court, or by the order or direction of the court or judge, or otherwise, a party entitled to receive costs is liable to pay costs to any other party, the taxing officer may tax the costs such party is so liable to pay, and may adjust the same by way of deduction or set-off; or may, if he shall think fit, delay the allowance of the costs such party is

entitled to receive, until he has paid or tendered the costs he is liable to pay; or such officer may allow or certify the costs to be paid, and direct payment thereof, and the same may be recovered by the party entitled thereto, in the same manner as costs ordered to be paid may be recovered;

Unnecessary appearance in court or at chambers

12. Where any party appears upon any application or proceeding in court or at chambers, in which he is not interested, or upon which, according to the practice of the court, he ought not to attend, he is not to be allowed any costs of such appearance, unless the court or judge shall expressly direct such costs to be allowed;

Costs of application to extend time

13. The costs of applications, to extend the time for taking any proceedings, shall be in the discretion of the taxing officer, unless the court or judge shall have specially directed how the costs are to be paid or borne. The taxing officer shall not allow the costs of more than one extension of time, unless he is satisfied that such extension was necessary, and could not, with due diligence, have been avoided. The costs of a notice of motion to extend time shall not be allowed in cases to which rule 705 applies, unless the party giving the notice has previously applied to the opposite party to consent, and he has not given a consent, to a sufficient extension of time, or the taxing officer shall consider there was a good reason for not making such application; and in case the taxing officer shall not allow the costs of such motion, and shall consider that the party applying ought to pay the costs of any other party occasioned thereby, he may direct such payment or deal with such costs in the manner provided by regulation 11;

Powers of taxing officers

14. The taxing officers of the supreme court shall, for the purpose of any proceeding before them, have power and authority to administer oaths, and shall, in relation to the taxation of costs, perform all such duties, and shall in respect thereof have such powers and authorities as are necessary for such purpose, including examining witnesses, directing production of books, papers, and documents, making separate certificates or allocatures and requiring any party to be represented by a separate solicitor;

Taxing master to assist when account comprises bill of costs

15. Where an account consists in part of any bill of costs, the court or judge may direct the taxing officer to assist in settling such costs, not being the ordinary costs of passing the accounts of a receiver; and the taxing officer, on receiving such direction, shall proceed to tax such costs, and shall have the same powers, and the same fees shall be payable in respect thereof, as if the same had been referred to the taxing officer by an order; and he shall return the same, with his opinion thereon, to the court or judge by whose direction the same were taxed;

Attendance of parties on taxation

16. The taxing officer shall have authority to arrange and direct what parties are to attend before him, on the taxation of costs to be borne by a fund or estate, and to disallow the costs of any party whose attendance such officer shall in his discretion consider unnecessary;

Refusal or neglect to procure taxation

17. When any party entitled to costs refuses or neglects to bring in his costs for taxation, or to procure the same to be taxed, and thereby prejudices any other party, the taxing officer shall be at liberty to certify the costs of the other parties, and certify such refusal or neglect, or may allow such party refusing or neglecting a nominal or other sum for such costs, so as to prevent any other party being prejudiced by such refusal or neglect;

Costs between party and party

18. As to costs to be paid, or borne by another party, no costs are to be allowed which do not appear to the taxing officer to have been necessary or proper for the attainment of justice, or defending the rights of the party, or which appear to the taxing officer to have been incurred through over-caution, negligence, or mistake, or merely at the desire of the party;

Costs of amendment of plaintiff's pleadings

19. Where the plaintiff is directed to pay to the defendant the costs of the cause, the costs occasioned to a defendant, by any amendment of the plaintiff's pleadings, shall be deemed to be part of such defendant's costs in the cause (except as to any amendment which shall appear to have been rendered necessary by the default of such defendant); but there shall be deducted from such costs any sum which may have been paid by the plaintiff, according to the order of the court at the time of any amendment;

Plaintiff refused costs of his amendments

20. Where, upon taxation, a plaintiff who has obtained a judgment with costs is not allowed the costs of any amendment of his pleadings on the ground of the same having been unnecessary, the defendant's costs occasioned by such amendment shall be taxed, and the amount thereof deducted from the costs to be paid by the defendant to the plaintiff;

Taxation where action, etc., dismissed with costs

21. Where an action or petition is dismissed with costs, or a motion is refused with costs, or any costs are by any general or special order directed to be paid, the taxing officer may tax such costs without any order referring the same for taxation, unless the court or a judge, upon the application of the party alleging himself to be aggrieved, prohibits the taxation of such costs;

Where total of costs taxed to be stated

22. Where any costs are by any judgment or order directed to be taxed, and to be paid out of any money or fund in court, the taxing officer in his certificate of taxation shall state the total amount of all such costs as taxed, without any direction for that purpose in such judgment or order;

23. The allowances in respect of fees to any accountants, merchants, engineers, actuaries, and other scientific persons to whom any question is referred, shall be regulated by the taxing officers, subject to appeal to the court or judge whose decision shall be final; Fees of accountants, etc.

24. If, upon any taxation, it shall appear that the costs have been increased by unnecessary delay or by improper, vexatious, prolix or unnecessary proceedings, or by other misconduct or negligence, or that from any other cause the amount of the costs is excessive, having regard to the nature of the business transacted, or the interests involved, or the money or value of the property to which the costs relate, or to the other circumstances of the case, the taxing officer shall allow only such an amount of costs as may be reasonable and proper, and may assess the same at a gross sum, and shall (if necessary) apportion the amount among the parties if more than one. The provisions as to the review of taxations shall apply to allowances and certificates under this rule; Power to taxing officer to assess costs at a gross sum in case of delay or improper conduct of litigation

25. If, on the taxation of a bill of costs payable out of a fund or estate (real or personal), or out of the assets of a company in liquidation, the amount of the professional charges and disbursements contained in the bill is reduced by a sixth part, no costs shall be allowed to the solicitor leaving the bill for taxation for drawing and copying it, nor for attending the taxation; Disallowances where bill reduced by a sixth

26. Where a cause or matter shall not be brought on for trial or hearing, the costs of, and consequent on, the preparation and delivery of briefs shall not be allowed, if the taxing officer shall be of opinion that such costs were prematurely incurred; Premature delivery of briefs

27. Where a cause or matter which stands for trial is called on to be tried, but cannot be decided by reason of a want of parties or other defect on part of the plaintiff, and is therefore struck out of the paper, and the same cause is again set down, the defendant shall be allowed the taxed costs occasioned by the first setting down, although he does not obtain the costs of the cause or matter; Defendant's costs where trial comes on but action cannot be tried

28. Where, in proceedings before the taxing officer, any party is guilty of neglect or delay, or puts any other party to any unnecessary or improper expenses relative to such proceedings, the taxing officer may direct such party or his solicitor to pay such costs as he may think proper, or deal with them under regulation 11; Delay before taxing officer

29. Where in any cause or matter any bill of costs is directed to be taxed, for the purpose of being paid or raised out of any fund or property, the taxing officer may, if he shall consider there is a reasonable ground for so doing, require Delivery of bill to client, where costs to be paid out of a fund

the solicitor to deliver or send to his clients or any of them, free of charge, a copy of such bill, or any party thereof, previously to such officer completing the taxation thereof, accompanied by any statement such officer may direct, and by a letter informing such client that the bill of costs has been referred to the taxing officer, giving his name and address, for taxation, and will be proceeded with at the time the officer shall have appointed for this purpose, and such officer may suspend the taxation for such time as he may consider reasonable;

Power of taxing officer to limit or extend time

30. The taxing officer shall have power to limit or extend the time for any proceeding before him and where, by any general order, or any order of the court or a judge, a time is appointed for any proceeding before or by a taxing officer, unless the court or judge shall otherwise direct, such officer shall have power from time to time to extend the time appointed upon such terms (if any) as the justice of the case may require, and although the application for the same is not made until after the expiration of the time appointed, it shall not be necessary to make a certificate or order for this purpose, unless required for any special purpose;

Indorsement on bill of costs

31. Every bill of costs which shall be left for taxation shall be indorsed with the name and address of the solicitor by whom it is so left, and also the name and address of the solicitor (if any) for whom he is agent, including any solicitor who is entitled or intended to participate in the costs to be so taxed. [E. 1002.]

ORDER XLVIII.

I.—*Service of Orders, etc.*

Showing original order on service

738. Except in the case of an order for attachment, it shall not be necessary to the regular service of an order that the original order be shown, if an office copy of it be exhibited. [E. 1012.]

Mode and time of service where not personal

739. All writs, notices, pleadings, orders, summonses, warrants, and other documents, proceedings, and written communications in respect of which personal service is not requisite, shall be sufficiently served if left within the prescribed hours, at the address for service of the person to be served as defined by rules 12, 105 and 106 with any person resident at or belonging to such place. [E. 1013.]

Service of notices from supreme court

740. Notices sent from any office of the supreme court may be sent by post; and the time at which the notice so

posted would be delivered in the ordinary course of post shall be considered as the time of service thereof, and the posting thereof shall be a sufficient service. [E. 1014.]

Service where no appearance or no address for service

741. Where no appearance has been entered for a party, or where a party or his solicitor, as the case may be, has omitted to give an address for service as required by rules 12, 105 and 106, all writs, notices, pleadings, orders, summonses, warrants, and other documents, proceedings and written communications in respect of which personal service is not requisite, may be served by filing them with the proper officer. [E. 1015.]

Manner of personal service

742. Where personal service of any writ, notice, pleading, order, summons, warrant, or other document, proceeding or written communication is required by these rules or otherwise, the service shall be effected, as nearly as may be, in the manner prescribed for the personal service of a writ of summons. [E. 1016.]

Substituted service

743. Where personal service of any writ, notice, pleading, summons, order, warrant, or other document, proceeding, or written communication is required by these rules, or otherwise, and it is made to appear to the court or a judge that prompt personal service cannot be effected, the court or judge may make such order for substituted or other service, or for the substitution of notice for service by letter, public advertisement, or otherwise, as may be just. [E. 1017.]

Service upon solicitor of party formerly appearing in person

744. Where a party, after having sued or appeared in person, has given notice in writing to the opposite party or his solicitor, through a solicitor that such solicitor is authorised to act in the cause or matter on his behalf, all writs, notices, pleadings, summonses, orders, warrants and other documents, proceedings and written communications which ought to be delivered to, or served upon, the party on whose behalf the notice is given, shall thereafter be delivered to or served upon such solicitor. [E. 1018.]

Service upon solicitor of person not a party

745. Where a person who is not a party appears in any proceeding either before the court or in chambers, service upon the solicitor by whom such person appears, whether such solicitor act as principal or agent, shall be deemed good service except in matters requiring personal service. [E. 1019.]

Affidavits of service

746. Affidavits of service shall state when, where and how, and by whom, such service was effected. [E. 1020.]

ORDER XLIX.

NONCOMPLIANCE AND IRREGULARITIES.

Noncompliance, effect of

747. Noncompliance with any of these rules or of any rule of practice, for the time being in force, shall not render any proceedings void unless the court or a judge shall so direct but such proceedings may be set aside either wholly or in part as irregular or amended, or otherwise dealt with in such manner and upon such terms as the court or judge may think fit. [E. 1037.] C. O. 21, R. 538.

Waiver of irregularity

748. No application to set aside any proceeding for irregularity shall be allowed unless made within reasonable time, nor if the party applying has taken any fresh step after knowledge of the irregularity. [E. 1038.] C. O. 21, R. 539.

Grounds of irregularity to be stated

749. When an application is made to set aside proceedings for irregularity, the several objections intended to be insisted upon shall be stated in the notice of motion. [E. 1039.] C. O. 21, R. 540.

Costs of summons

750. When a notice is given to set aside any process or proceeding for irregularity with costs and the motion is dismissed generally, without any special direction as to costs, it is to be understood as dismissed with costs. [E. 1040.] C. O. 21, R. 541.

ORDER L.

MISCELLANEOUS.

I.—*Forms.*

Forms

751. The forms contained in the appendix to these rules shall be used with such variations as circumstances may require; and as to all other matters, the forms used in the administration of civil justice in England, with such variations as will make them respectively applicable to proceedings in the Supreme Court, whether *en banc* or otherwise, may be used. C. O. 21, R. 535.

II.—*Actions Against Public Officers.*

Venue

Limitation

Notice of action

752. All actions and prosecutions to be commenced against any person for anything purporting to be done in pursuance of his duty as a public officer (unless otherwise ordered by the judge) shall be commenced and tried in the district wherein the act was committed, and must be commenced within six months after the act was committed and not otherwise, and notice in writing of such action and of the cause thereof must be given to the defendant one month, at least, before the commencement of the action. C. O. 21, R. 536.

ORDER LI.

LUNATICS.

753. Proceedings in lunacy shall be by petition to a judge, filed with the local registrar and verified on oath, setting forth the grounds on which the application is made and the relation or connection of the petitioner to, or with, the alleged lunatic and his property and estate, as also a description and value of the same separating real and personal estate. C. O. 21, R. 551. Petition to judge Verification

754. Upon presentation of such petition, the judge shall appoint a time and place at which he will hear the same; at which time and place (all necessary parties having been duly notified) the judge shall inquire into the facts and hear such evidence under oath as may be adduced, and thereupon determine whether or not the person who is the subject of the inquiry is at the time of such inquiry of unsound mind, has property, and is incapable of managing such property. C. O. 21, R. 552. Hearing of petition

755. A copy of such petition and notice of the intended application shall be served on the alleged lunatic, unless such service be dispensed with by the judge. C. O. 21, R. 553. Service on lunatic

756. The judge may order the issue of a commission to take evidence to be used on any such hearing as in any ordinary suit in court, and all depositions taken thereunder shall be received in evidence at the hearing, saving all just exceptions. C. O. 21, R. 554. Commission to take evidence

757. In case the judge shall determine such person to be a lunatic and that he has property, the judge shall forthwith order the appointment, under the seal of the court, of one or more persons as guardian or guardians to his estate. C. O. 21, R. 555. Appointment of guardian

758. On every such inquiry, the alleged lunatic, if he be within the jurisdiction of the court, shall be produced and examined by the judge unless such examination be dispensed with. C. O. 21, R. 556. Examination of lunatic

759. The judge may order the costs, charges and expenses of and incidental to proceedings in matters of lunacy to be paid, either by the party presenting the petition or the party opposing the same (if opposition is made), or out of the estate or partly one way and partly the other. C. O. 21, R. 557. Costs

760. In every case, unless otherwise specially provided by order of the judge, the following provisions shall be complied with:

Security by guardian

1. The guardian of the estate, except in the case of the appointment of the official administrator or official guardian, shall, before receiving his appointment, furnish his own bond together with the bond of a guarantee company unless otherwise ordered by the court or a judge in double the approximate value of the personal estate, and of the annual value of the real estate for duly accounting for the same, once in each year or oftener if required by the judge or court, such bond to be (in form approved of by the judge) to the local registrar and his successors in office or legal assigns, which bond shall be filed in court;

Inventory

2. The guardian of the estate shall, within six months after appointment, file in court a true inventory of the whole real and personal property and estate of the lunatic, stating the income and profits thereof and setting forth the debts, credits and effects of the lunatic so far as the same have come to the knowledge of the guardian;

Supplementary inventory

3. If any property belonging to the estate be discovered after the filing of the inventory, the guardian shall file a true account of the same, from time to time, as the same is discovered;

Verification

4. Every inventory shall be verified by the oath of the guardian. C. O. 21, R. 558.

Where personal estate insufficient for debts Petition for realisation on realty

761. Whenever the personal estate of a lunatic is not sufficient for the discharge of his debts:

1. The guardian of his estate may apply, by petition to the judge, for authority to mortgage or sell so much of the real estate as may be necessary for the payment of such debts;

2. Such petition shall set forth the particulars and amount of such estate (real and personal) of the lunatic, the application made of any personal estate, and an account of the debts and demands against the estate;

Inquiry by judge

3. The judge shall make, or cause to be made, inquiries into the truth of the representations made in the petition, and hear all parties interested in the real estate;

Order for sale or mortgage

4. If the judge is satisfied as to the result of such inquiries, that the personal estate is not sufficient for the payment of the debts, and that the same has been applied to that purpose as far as the circumstances of the case render proper, the judge may order the real estate or a sufficient portion of it to be mortgaged or sold by the guardian, and the moneys thus raised shall be employed for the payment of the debts of the estate, and if insufficient shall be distributed in the same way as intestates' estates are distributed by law, the guardian having first provided a bond with sureties similar in terms to that provided by paragraph (1) of rule 760 for duly accounting for the proceeds so raised. C. O. 21, R. 559.

Bond by guardian

762. When the personal estate and the rents, profits and income of the real estate of the lunatic are insufficient for his maintenance or that of his family, or for the proper education of his children, or when for any other cause it shall appear desirable so to do on application made by the guardian or by any member of the family of the insane person, the judge may, after inquiry as hereinbefore provided in the case of debts, order the mortgaging, or sale of the whole or part of the real estate of the lunatic by the guardian, the guardian having first provided a bond with sureties as required by the preceding rule. C. O. 21, R. 560. Sale or mortgage of real estate for maintenance of lunatic or family

763. The judge may order such fees to the local registrar, and costs of and relating to any petition, order, direction and conveyance, including remuneration to the guardian, as he may consider reasonable to be paid and raised from the lands, rents or personal estate of the lunatic in respect of whom the same may be respectively incurred, made or caused. C. O. 21, R. 561. Local registrar's fees. Costs. Guardian's remuneration

764. On sufficient grounds shown, the judge may remove a guardian and appoint another in his stead. C. O. 21, R. 562. Removal of guardian

765. In the proceedings aforesaid, the petitions and papers may be intituled as follows: Intituling proceedings

In the Supreme Court,

Judicial District of

In the matter of

C. O. 21, R. 563.

ORDER LII.

INFANTS.

I.—*Guardians.*

766. The court or a judge thereof may appoint guardians of infants and of their estates (but unless the court or judge shall otherwise order, no guardian shall be appointed to the person or estate of any infant of the age of fourteen years, or over, without the consent of such infant), and letters of appointment may be obtained as in the case of letters of administration. A record of every appointment and removal shall be made, and the like record thereof kept with the papers upon which the appointment and removal is made, in like manner as near as may be as in the case of probate and administration. C. O. 21, R. 564. Guardianship of infants and their estates. Letters of appointment

Mother may be appointed notwithstanding other appointment by father

767. The court or judge may, upon hearing the petition of the mother of an infant whose father is dead, appoint the mother or some other person to take the guardianship of the person of the infant, notwithstanding any testamentary provisions to the contrary, or any appointment of another person as guardian by the father, if it shall appear just and proper; and may also make an order for the maintenance of the infant by the payment, out of any estate to which the infant is or shall be entitled, of such sum or sums of money from time to time as, according to the value of the estate, such court or judge thinks just and reasonable. C. O. 21, R. 565.

Maintenance of infant

Testamentary appointment of mother may be preferred to that of father

768. The court or judge may give effect to the testamentary appointment of guardians by the mother of infant children, either as respects the person or estate or both, notwithstanding the previous appointment of guardians by testament of the father of such infants upon petitions presented and facts proved, if it shall seem advisable, and in the interest of the infants, to do so; and make an order for the maintenance of the infants as in the last preceding rule mentioned. C. O. 21, R. 566.

Maintenance

Testamentary guardians and trustees Removal

769. Testamentary guardians and trustees may be removed for proper cause the same as other guardians and trustees. C. O. 21, R. 567.

General powers of court or judge

770. In all matters and applications touching or relating to the appointment of guardians, control, or removal of guardians of any infants, and the security to be given by such guardians or otherwise, the court or judge shall have full power and authority to summon and order the attendance of witnesses, and to order the examination of the same before the court or judge, and to order the production of deeds, writings and documents, and generally to enforce all orders, decrees and judgments in such manner as shall seem expedient, according to the practice and procedure of the court in that behalf, and in such manner as the court or judge shall direct. C. O. 21, R. 568.

Appointment of guardian on notice to mother

771. Upon the written application of any infant, or the friend or friends of any infant, and upon notice thereof to the mother of such infant if living in Saskatchewan, the court or judge may, upon a proper case made out for that purpose, appoint some suitable and discreet person or persons to be guardian or guardians of such infant. C. O. 21, R. 569.

Security by guardian

772. There shall be taken from the guardian or guardians appointed by the court, except in the case of the appointment of the official administrator or official guardian, the bond of a guarantee company unless otherwise ordered by the court or

a judge in the name of the infant or infants in such penal sum as the court or judge shall direct or approve, having regard to the circumstances of each case; and such bond shall be conditioned that the said guardian or guardians shall and will faithfully perform the said trust, and that he or they, his or their executors or administrators, shall and will, when the said ward becomes of the full age of twenty-one years, or whenever thereunto required by the court or a judge, render to his or their said ward or his or their executors or administrators a true and just account of all goods, moneys, interests, rents and profits of property of such ward which have come or which might but for his or their default have come into the hands of such guardian or guardians, and that he or they shall and will thereupon, without any delay, deliver and pay over to the said ward or to his or her executors or administrators, the property or the sum or balance of money which may be in the hands of the said guardian or guardians belonging to such ward, deducting therefrom and retaining a reasonable sum for the expenses and charges of the said guardian or guardians; and such bond shall be filed in the office of the local registrar, but in cases where the estate is of small value, such bond or bonds may be dispensed with. C. O. 21, R. 570.

May be dispensed with

773. The guardian or guardians of the person of an infant so appointed may, during the continuance of his or her guardianship, in case the infant be under the age of fourteen years, with the approbation of two justices of the peace and the consent of such ward, or in case the infant be not under the age of fourteen years then with the consent of the ward only, place or bind him or her an apprentice to any lawful trade, profession or employment; such apprenticeship in the case of males, not extending beyond the age of twenty-one years, and in the case of females not beyond the age of eighteen years, or the marriage of the ward within that age. C. O. 21, R. 571.

Apprenticing infants

774. The court or judge may, on proper cause being shown for that purpose, discharge any such ward from the apprenticeship in the last preceding rule mentioned, and order the articles or instrument of apprenticeship to be delivered up to be cancelled, or make such other order in respect of the master or apprentice, or either of them, as shall under the circumstances appear to be proper and just; and may also, upon reasonable complaint made and sustained, remove any guardian or guardians from his or their guardianship, and if it shall appear necessary appoint another guardian or guardians in his or their stead. C. O. 21, R. 572.

Discharging apprenticeship

Removal of guardian

775. The practice and procedure in respect of guardianship, and all questions relating thereto, shall conform as nearly as the circumstances will admit to the practice and procedure in England:

Practice and procedure

Provided always, that the court or judge may, in any case, where the circumstances warrant it, to save expenses, vary the same. C. O. 21, R. 573.

II.—*Custody of Infants.*

Order for access of mother

776. The court or judge, upon application by the mother of any infant being in the sole custody or control of the father thereof, or of any other person by his authority or of any other person without his authority, or of any guardian after the death of the father, may make an order for the access of the mother to such infant at such times, and subject to such regulations,

Delivery to mother

as the court or judge thinks convenient and just; and, if such infant be within the age of twelve years, may make an order for the delivery of such infant into the custody and control of the mother, and there to remain for such time and under such

Maintenance and education

conditions as the court or judge shall prescribe; and, in dealing with any such application, the court or judge may also make an order for the maintenance and education of such infant by payment by the father thereof, or by payment out of any estate to which such infant may be entitled, of such sum or sums of money from time to time as according to the pecuniary circum-

Custody of infants generally

stances of such father, or the value of such estate, the court or judge thinks just and reasonable. As a rule, the father shall have the custody and control of his infant children, but it shall be lawful for the court or a judge, on a proper case made for that purpose, to order any infant child or children to be delivered into the sole custody and control of the mother, on such conditions and subject to such regulations as the circumstances and facts of the case shall render proper, reasonable and just, wherever such child or children may be, or under whatever authority or control they may have been placed, any law, usage or custom to the contrary notwithstanding. C. O. 21, R. 574.

Evidence on application

777. On the investigation of the facts on any application mentioned in the preceding rule, the court or judge may enforce the attendance of any person before the court or judge, and take evidence under oath touching the matter of the application by order made for that purpose, and on failure of the person to attend for the purpose aforesaid, after notice of the order in that behalf, the court or judge may order that such person shall be committed for contempt of court, or may decide such application on affidavits received and filed or to be received and filed, or on the evidence taken *viva voce* and such affidavits. C. O. 21, R. 575.

Enforcement of order

778. All orders and rules made by a judge or by the court under any of the preceding rules may, in addition to all other

remedies, be enforced by the judge or by the court (according as the same shall be made by a judge or the court) by attachment or process for contempt. C. O. 21, R. 576.

Mother unsuitable for care of infant

779. No order directing that the mother shall have the custody of, or access to, an infant shall be made in virtue of the preceding rules in favour of a mother against whom adultery has been established, or to whom the custody or control of an infant could not be safely confided on account of improper conduct or habits of life. C. O. 21, R. 577.

III.—*Estate and Property of Infants.*

Disposition of property of infant under order of court

780. When an infant is seized or possessed of, or entitled to, any real estate in fee simple or for a term of years or otherwise howsoever in Saskatchewan, and the court or judge is of opinion that a sale, lease or other disposition of the same, or any part thereof, is expedient, necessary or proper in the interest of the infant or for the maintenance or education of the infant, or that by reason of any part of the property being exposed to waste and dilapidation, or to depreciation from any other cause satisfactory to the court or judge, his interest requires or will be substantially promoted by such sale, lease or other disposition, the court or judge may order the sale, letting for a term of years or other disposition of such real estate, or any part thereof, to be made under the direction of the court or judge, or by the guardian of the infant or by any person appointed for the purpose, in such manner and with such restrictions as may seem expedient, and may order the infant to convey, or demise, or otherwise dispose of the estate as the court or judge thinks proper. C. O. 21, R. 578.

Application, by whom Consent of infant

781. The application shall be made in the name of the infant by his next friend or by his guardian, but shall not be made without the consent of the infant, if he is of the age of seven years or upwards. C. O. 21, R. 579.

Execution of conveyance for infant

782. When the court or judge deems it convenient that a conveyance should be executed by some person in the place of the infant, the court or judge may direct some other person in the place of the infant to convey the estate. C. O. 21, R. 580.

Conveyance to be effectual

783. Every such conveyance, whether executed by the infant or some person appointed to execute the same in his place, shall be as effectual as if the infant had executed the same and had been of the age of twenty-one years at the time. C. O. 21, R. 581.

Disposition of moneys raised

784. The moneys arising from any such sale, lease or other disposition shall be laid out, applied, and disposed of in such manner as the court or judge directs. C. O. 21, R. 582.

Moneys raised from land to devolve as land

785. On any sale, lease, or other disposition so made, the moneys so raised or the securities taken or the surplus thereof shall be of the same nature and character as the estate sold or disposed of, and the heirs, next of kin, or other representatives of the infant shall have the like interest in any surplus which may remain of the proceeds, at the decease of the infant, as they would in the estate sold or disposed of, if no sale or other disposition had been made thereof. C. O. 21, R. 583.

Incumbered estate Acceptance or permanent investment of sum in lieu of incumbrance

786. If any real estate of an infant is subject to any incumbrance, and the person entitled to such incumbrance consents in writing to accept, in lieu of such incumbrance, any gross sum of money which the court or judge thinks reasonable, or the permanent investment of a reasonable sum of money, in such manner that the interest thereof be made payable to the person entitled to such incumbrance during her or his life, the court or judge may direct the payment of such sum, or the investment of such other sum of money, out of the proceeds or other disposition of the real estate of the infant:

Where incumbrance of uncertain duration

Provided always, that it shall be competent for the court or judge, in any case, where the estate of the infant is subject to any lien or incumbrance of uncertain duration, to compute the reasonable value of the same, and to order the sale or other disposition of the estate of the infant freed or discharged from such incumbrance, and direct the payment of the value of such incumbrance out of the proceeds of the sale or other disposition of the real estate of the infant. C. O. 21, R. 584.

Appearance of infant in person on application

787. In any proceeding for the selling, letting or other disposition of the estate of an infant, it shall not be necessary that the infant shall appear *in propria persona* before the court or judge, unless so ordered; but the ground of the proceedings must be made out to the satisfaction of the court or judge before the application is granted. C. O. 21, R. 585.

Estate of infant may be conveyed by vesting order

788. In case of any sale or other disposition of any real estate of an infant under the provisions of these rules, the interest and estate sold, or otherwise disposed of, may be conveyed to the purchaser by the vesting order of the court, which shall be to all intents and purposes as effectual to pass the interest and estate so sold, or disposed of, as a conveyance duly executed as provided in these rules. C. O. 21, R. 586.

Administrator ad litem

789. Where no probate of the will of a deceased person or letters of administration to his estate have been granted, and representation of such estate is required in any action or proceeding in court, the judge may appoint the public administrator administrator *ad litem,* according as the case may require. C. O. 21, R. 592.

790. The public administrator may obtain an originating summons as plaintiff under rule 624, as if he were a creditor or one of the next of kin of the deceased, upon obtaining special leave of a judge to do so, which leave shall be granted by the judge *ex parte* upon his being satisfied by affidavit or otherwise that it is expedient to grant it. C. O. 21, R. 598. Proceedings by public administrator

791. Whenever an action is brought, or is pending, in respect of any property or estate in which one or more infants is or are interested, the writ and statement of claim shall be served on the official guardian in the judicial district in which the writ was issued, together with a statement giving the full name, age and address of such infant or infants, his or their father, mother or guardian; and the official guardian shall be the guardian *ad litem,* and shall enter an appearance for such infant or infants, and shall for all purposes represent the infant or infants in such action. Action in which infant interested official guardian to be served and be guardian ad litem

(2) It shall be the duty of the official guardian to make all necessary or proper inquiries, to take all necessary or proper proceedings, and to protect and actively attend to the interests of the infant. Duties

(3) The costs of the guardian *ad litem* shall be taxed as between party and party and shall, subject to the discretion of the judge, be paid out of the estate. C. O. 21, R. 599. Costs

792. In any case in which it may appear desirable, the court or judge may appoint the official guardian guardian of the estate of any infant, or of the estate of any lunatic. C. O. 21, R. 600. Official guardian may be guardian

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ORDER LIII.

INTERPRETATION OF TERMS.

793. In the construction of these rules, unless there is anything in the subject or context repugnant thereto, section 2 of *The Judicature Act* shall be applicable, and the several words hereinafter mentioned or referred to shall have, or include, the meanings following: Interpretation of terms

"Person" includes a body corporate or politic;

"Probate actions" include actions and other matters relating to the grant or recall of probate, or of letters of administration other than common form business;

"Proper officer" means an officer to be ascertained as follows:

(*a*) Where any duty to be discharged under the Act or these rules is a duty which has heretofore been discharged by any officer, such officer shall continue to be the proper officer to discharge the same;

(*b*) Where any new duty is under the Act or these rules to be discharged, the proper officer to discharge the same shall be such officer as may, from time to time, be directed to discharge the same.

"Master" means a local master of the supreme court;

"Receiver" includes consignee or manager appointed by, or under, an order of the court or a judge;

"Taxing officer" means the registrar or local registrar, until a separate taxing officer is appointed;

"The Act" means *The Judicature Act.*

"Guarantee company" means a company mentioned in *The Guarantee Companies Security Act.*

Number

794. In these rules, unless repugnant to the context, the singular number shall include the plural, and the plural number shall include the singular. [E. 1042.]

ORDER LIV.

GENERAL RULES.

Repealed orders not revived

795. No order or rule annulled by any former order shall be revived by any of these rules, unless expressly so declared. [E. 1043.]

796. Where no other provision is made by the Act or these rules, the present procedure and practice remain in force. [E. 1044.]

797. These orders and rules may be cited as "The Rules of the Supreme Court 1911"; they shall come into operation on the first day of January, 1912, and shall also apply as far as practicable (unless otherwise expressly provided), to all proceedings taken, on or after that day in all causes and matters then pending. All previous orders and rules heretofore made are hereby annulled and the foregoing orders and rules shall stand in lieu thereof.

RULE 1.—A garnishee summons does not require a præcipe. *Nohren* v. *Auten* (Alb.), 15 W. L. R. 417.

RULE 17.—Service will not be set aside because the copy served has not been signed, if no one is misled. *Milner* v. *Marriot* (Alb.), 7 W. L. R. 793. Nor will it be set aside because it is signed by Registrar as Clerk of the Court instead of as Local Registrar. *Crown Lumber Co.* v. *Fitzsimmons,* 8 W. L. R. 544.

A writ issued in the wrong judicial district is not a nullity, but constitutes an irregularity which may be amended. *Theriault* v. *Evans* (N. W. T.), 4 W. L. R. 550; *Cushing Brothers Co.* v. *Groos* (N. W. T.), 4 W. L. R. 551; *Doody* v. *Bigelow* (Yuk.), 8 W. L. R. 978.

A writ cannot be set aside in part. *Smith* v. *Dickinson,* 3 Terr. L. R. 332. A writ will not be set aside because the copy has no marks to indicate the original seal if the original is in fact sealed. *Clarke* v. *Brownlie,* 3 Terr. L. R. 194.

Writs of summons brought by next friend of an infant or a lunatic will be set aside if the consent of the next friend is not filed in the Local Registrar's office. *Hourston* v. *Spence* (N.W.T.), 2 W. L. R. 343. S.-s. 3. The writ may be served on any agent of a foreign company, even though the company has a registered attorney within the province. *Jones* v. *Central Canada Ins. Co.,* 8 W. L. R. 614, but it must be some chief or principal officer or some one who manages for the company some material part of their business or who represents or superintends its interests, and service on an agent selling on commission is bad. *Ehman* v. *New Hamburg Man. Co.,* 4 Terr. L. R. 363.

A writ for service *infra juris* will be set aside when the defendants are shown to be a foreign company having no agent within the jurisdiction. *Ehman* v. *New Hamburg Man. Co., supra.*

A writ served on an agent of a foreign company only temporarily resident in the province is bad service. *Mitchell* v. *Ontario Wind Engine & Pump Co.,* 3 Terr. L. R. 468.

One partner having been served and judgment signed against the firm it is irregular then to serve another partner. *Ross Brothers, Ltd.* v. *Hankin* (Alb.), 9 W. L. R. 222.

As to service on a society, not a corporation, see *Smith* v. *Dickinson,* 3 Terr. L. R. 332.

RULE 19.—The affidavit should shew fully the efforts that have been made to effect personal service.

RULE 22.—If the writ or the statement of claim is not marked as an exhibit, the service would be bad. See note to *Morrison* v. *Morrison,* 3 Terr. L. R. 399.

RULE 23.—Service of a copy of the order is not necessary. *Shore* v. *Hewson,* 1 Sask. 72, 7 W. L. R. 634.

The service of a copy of the writ on a foreigner under an order for service *ex juris* is regular, the form of writ provided being itself a notice. *Conrad* v. *Alberta Mining Co.*, 4 Terr. L. R. 412.

A claim for foreclosure of land in the province is within the rule. *Shore* v. *Hewson, supra.* A claim for compensation and expenses by an agent travelling within the province was held to be within the rule. *Dickson* v. *McInnes,* 3 W. L. R. 60. A claim in respect of goods shipped to a local agent for the plaintiffs was held to be within the rule, but otherwise when shipped from a point outside to the plaintiffs direct, the plaintiff in both cases paying the freight. *Cuthbertson* v. *Canada Radiator Co.,* 3 W. L. R. 86. A contract for sale of lands made outside, where the first payment was to be made outside and no mention was made of where the other payments were to be made, was held to be within the rule on the ground that in the absence of a contrary intention the debtor must follow his creditor. *Sask. & Battle River Land & Development Co.* v. *Hunter,* 7 W. L. R. 298.

In an action for two breaches arising from the same contract, one of which was within and one without, it was held that an order for service *ex juris* was properly made; the claim for the breach outside the rule was truck out of the statement of claim. *Sask. & Battle River Land* v. *Hunter, supra.*

RULE 24.—Where the defendant was described as within but was subsequently found to be without the jurisdiction, leave was given to serve the writ *ex juris. Moore* v. *Martin,* 1 Terr. L. R. 236.

The rule means that the facts stated in the affidavit must shew a good cause of action; it is not necessary to state that in the belief of the deponent the plaintiff has a good cause. *Shore* v. *Hewson,* 1 Sask. 72, 7 W. L. R. 634, following *Foyle* v. *Barstow* (1882), 20 Ch. D. 240, 51 L. J. Ch. 103.

The affidavit must state positively a good cause of action. *Hawes* v. *Clarke,* 15 W. L. R. 516. Leave to file a further affidavit will be allowed, if necessary, or a second application can be made. *Idem.*

The plaintiff, however, only needs to shew a *prima facie* case. *Moore* v. *Martin,* 1 Terr. L. R. 236.

RULE 27.—The fact that the mode of service ordered did not bring the writ to the knowledge of the defendant is not alone sufficient for setting it aside, and his only remedy, if he has a meritorious defence, is to have the judgment set aside and to be allowed to defend on the merits. *Conrad* v. *Alberta Mining Co.,* 4 Terr. L. R. 412.

RULE 28.—This is practically the same as the English Rule 1016.

The rule does not allow, for service *ex juris* of an originating summons, *e.g.*, a summons to enforce an award. Following *Compagnie Gen. d'Eaux Minerales* (1891), 3 Ch. 451, the Court would probably allow the case to proceed on notice to adverse party.

RULE 32.—There must be both a *bona fide* mistake and it must appear that the addition is necessary for determining the matter. The English rule prevents the addition of a party without his consent, but query under this rule, though it would be necessary to shew a strong case to compel him without his consent. *Hogan* v. *Bactz* (Y.), 1 W. L. R. 393.

RULE 34.—Where a party has been joined as a defendant but no relief is claimed against him, upon application his name will be struck out; but if not made before filing defence no costs will be allowed. *Turner* v. *Van Meter,* 2 W. L. R. 257. Where an action was brought against two insurance companies upon separate policies relating to same subject matter, the plaintiff was put to her election as to which defendants she would proceed against, and it was ordered that the action be discontinued against the other. *Levi* v. *Phœnix Ins. Co.,* (Man.) 6 W. L. R. 17.

This rule applies to joinder of parties not to joinder of actions, and different defendants cannot be joined in the same action when the real cause of action against each is separate, and no relief is claimed against them jointly. *Equity Fire Ins. Co.* v. *Coulthard Alexander Co.,* 1 Sask. 100, 8 W. L. R. 74.

In an action for fraudulent conveyance the grantor should be made a defendant if the plaintiff also claims for an amount for which judgment has not been obtained. *Belcher* v. *Hudsons,* 1 Sask. 474, 9 W. L. R. 205, but *contra,* when judgment has been obtained. *McDonald* v. *Dunlop,* 2 Terr. L. R. 177; *Gunn* v. *Vinegratsky* (Man.), 17 W. L. R. 54.

RULE 38.—Beneficiaries may be proper parties, but they are not necessary parties. *Re Bowden,* 45 Ch. D., at page 447. They may be added even against the wish of the plaintiff, and *quære,* whether the Court may not on its own motion direct their addition. *R.* v. *Royal Bank of Canada,* 17 W. L. R. 508, and *Gas Light & Coke Co.* v. *Touse,* 35 Ch. D., at page 526.

RULE 43.—The application to strike out defendant must not be made before appearance entered. *Cyr* v. *O'Flynn,* 5 W. L. R. 524. A second application on perfected material will not be heard. *Idem.*

RULE 50.—This rule does not authorize a foreign firm, which does not carry on business within the jurisdiction, either to sue or to be sued. A writ issued by a foreign firm suing in the firm's name is an irregularity, but leave may be given to amend by in-

serting the names of the individual partners. The irregularity will be waived by appearance. *Kasindorf Bros.* v. *Hudson Bay Ins. Co.*, 11 W. L. R. 143, on appeal 12 W. L. R. 285.

RULE 52.—When judgment is signed against a firm it is irregular to then serve another partner. See note to Rule 14, s.-s. 4.

RULE 74.—The third party is only called in to oppose a claim which the defendant himself is opposing, but may not be allowed in where the plaintiff is delayed or hampered. The case is discretionary with the Judge. *Daniels* v. *Dickson* (Man.), 6 W. L. R. 165.

Where the claim over is founded on tort the rule is not applicable. *Western Canada Flour Mills Co.* v. *Canadian Pacific R. W. Co.*, 16 W. L. R. 420.

A claim over for breach of warranty is not a claim for contribution or indemnity. *Bolduc* v. *Larose*, 5 Terr. L. R. 6.

This is the proper procedure where indemnity is claimed, for example, by a bailiff against his principal, and an application under rule 35 to join as co-defendant was refused. *Randall* v. *Robertson*, 2 Terr. L. R. 332.

The notice to a foreign firm must be served on the individual partners (Rule 50). *Imperial Bank of Canada* v. *Hull*, 4 Terr. L. R. 331.

The rules as to third party procedure do not apply to a counterclaim against the original plaintiff and a third party. *Taylor* v. *Pope*, 3 Terr. L. R. 132.

RULE 93.—Where there was no joint cause of action, though both causes arose out of the same set of facts, the plaintiff was put to his election. *Equity Fire Insurance Co.* v. *Coulthard Alexander Co.*, 8 W. L. R. 74.

RULE 102.—If appearance and judgment are handed in simultaneously, the appearance is in time. *Massey-Harris Co.* v. *Ott*, 3 Terr. L. R. 438.

It was held in *Smith* v. *Logan*, 17 P. R. 219, by the Court of Appeal, Ontario, that appearance is in time when the Local Registrar is entering judgment and before the stamps are affixed.

RULE 118.—A defendant who has not appeared cannot take a step in the cause except to apply to set aside the service of the writ. There are, however, a number of proceedings incidental to a cause authorised by statute which are not steps in the action, for example, an application to set aside a writ of attachment. *Sawyer-Massey Co.* v. *Carter*, 9 W. L. R. 675.

RULE 119.—This rule is peremptory and judgment entered will be set aside if it be shewn that the defendant is an infant or of

unsound mind, whether the plaintiff is aware of the fact or not. *Westaway* v. *Hamer,* 7 W. L. R. 473.

In *Canadian Bank of Commerce* v. *Syndicat Lyonnais du Klondike* (Y.), 6 W. L. R. 424, where no appearance was entered, though the defendant had appeared on the trial, judgment was set aside under the special circumstances of the case.

RULE 121—Where the claim is for a debt and interest accruing before date of writ, but there is no allegation of any contract to pay interest, it cannot be included in a judgment by default. Such judgment will be set aside as irregular. *Ewing* v. *Latimer,* 5 Terr. 499.

RULE 123.—An interlocutory judgment is irregular if it awards damages and omits to state how such damages are to be assessed, or if such judgment awards costs. *Perry* v. *Hunter,* 3 Terr. L. R. 266. In an action for detinue it is regular to order return of goods in interlocutory judgment. *Idem.*

RULE 131.—Mere delay is not a bar to an application to set aside a regular judgment on the merits, unless an irreparable injury be thereby done to the plaintiff. *Hanson* v. *Pearson,* 3 Terr. L. R. 197, even after delay of one year. *Westman* v. *Ogmundson,* 3 Terr. L. R. 442.

Delay in moving to set aside must be accounted for. *Regina Trading Co.* v. *Godkin,* 7 W. L. R. 651. Accounting for delay by stating that the defendant is a foreigner is not to be encouraged. *Sandhoff* v. *Metzer,* 4 W. L. R. 18. Delay in moving to set aside even an irregular judgment must be accounted for. *Scott* v. *Hoffner,* 3 W. L. R. 247, where the delay was 40 days. Mere delay however is not a ground for refusing to set aside a judgment unless irreparable damage be done the plaintiff thereby; the fact that a trial has been lost is always an element in considering whether irreparable injury may not be done to the plaintiff. *Sandhoff* v. *Metzer, supra.*

Quære, whether a default judgment will be set aside to allow a counterclaim to be set up. *Sandhoff* v. *Metzer, supra.*

Where the defendant shows a good defence to part of the claim, the particulars of the defence must be shown and the defence indicated before a default judgment will be set aside. *Moyie Lumber and Milling Co.* v. *May,* 1 W. L. R. 152; *Miller* v. *Ross,* 12 W. L. R. 315. There must be sufficient facts shown to enable the Judge to decide whether or not the defendant has a probable defence. *Stewart* v. *McMahon,* 7 W. L. R. 643, 1 Sask. 209, and it is not enough for the defendant to swear that he has a defence on the merits or to swear "I do not owe the plaintiff the account mentioned in the statement of claim." *Jones* v. *Murray,* 9 W. L. R. 204. It is otherwise, however, if the statement of claim itself discloses a point of law. *Miller* v. *Ross, supra.*

As to setting aside a judgment made against an infant, see *Westaway* v. *Hamer,* 7 W. L. R. 473, 1 Sask. L. R. 50.

The discretion of the Judge who sets aside a default judgment will not be lightly interfered with. *Anticknap* v. *City of Regina,* 7 W. L. R. 163.

The affidavit of merits should be made by some one having personal knowledge. *Hanson* v. *Pearson, supra.* Some degree of particulars of defence must be shewn. *Mogie Lumber* v. *May,* 1 W. L. R. 152.

A judgment may be set aside as to part only. *Moyie Lumber* v. *May, supra; Stratton* v. *City of Saskatoon,* 1 Sask. L. R. 426. In the latter case, where the plaintiff had not severed his claim for different services, the disclosure of a meritorious defence as to one part of the claim was held sufficient to warrant the judgment being set aside. The terms of the order made by Wetmore, C.J., were:— That the defendant pay the plaintiff's costs of signing judgment, of issuing execution and of the sheriff's fees (if any) on such execution, and the plaintiff's costs subsequent to the signing of judgment on his application for judgment against the garnishee, including any costs awarded to be paid by the plaintiff to any person opposing that application; the defendant to pay the costs of the application to set aside.

On an application to set aside an irregular judgment, no affidavit of merits is required. *Perry* v. *Hunter,* 3 Terr. L. R. 266.

RULE 135.—The application may be made after the defence is filed, and it is not necessary to account for delay. *Victoria Lumber* v. *Magee,* 2 W. L. R. 1.

Notice served before appearance will only be allowed when the plaintiff will probably lose the amount of his claim through some fraudulent, negligent, or other improper act or omission of the defendant. *Tuckett Cigar Co.* v. *Wickett* (Alb.), 12 W. L. R. 210.

When the Judge is satisfied that there is no defence and no fairly arguable point, it is his duty to give judgment for the plaintiff. *Anglo-Italian Bank* v. *Wells,* 38 L. T. R., quoted in *Velie* v. *Hemstreet,* 11 W. L. R., at page 299.

The verification of the cause of action in the affidavit may be in general terms. The form given in Annual Practice, Appendix B, has been held to be sufficient. *Codville Co.* v. *Smith,* 3 W. L. R. 197, following *May* v. *Chidley* (1894), 1 Q. B. 451; *Alloway* v. *Pembranke,* 8 W. L. R. 134; 1 Sask. L. R. 127.

In an application under this rule the only question to be determined is whether there is a triable issue to go before the Court or not. The merits are not under consideration, and a complete defence need not be shewn. It is sufficient to shew a fair probability of a good defence to be allowed to defend. *Mansell* v. *Moore,* 7 W. L. R. 808; *Alloway* v. *Pembranke, supra;* for example, where in an action for goods sold the defendant swore he never ordered or authorised the order, he was allowed to defend. *Prince* v. *Richards,* 7 W. L. R. 836.

In the case of a note, the production of the note, proof of signature and endorsement by payee are required. In case of sale of goods, proof of sale by some person, having knowledge of sale, and something to establish the claim for interest, is required. *Moose Mountain Lumber and Hardware Co.* v. *Anderson,* 6 W. L. R. 354. In an action on a foreign judgment, proof of indebtedness on the judgment and that nothing has been paid is sufficient; a contention that it was not proved that the judgment referred to in the affidavit was the judgment sued on was not allowed. *Mills* v. *Magrath* (Alb.), 7 W. L. R. 74. Where there is an allegation of fraud, a holder of a note must prove (1) that he became the holder before the note was overdue, (2) that he had no notice of dishonour, (3) that he took *bona fide* and for value, and (4) that he had no notice of any defect of title. *Moore* v. *Scott* (Man.), 5 W. L. R. 381.

Generally, when there is an allegation of fraud, leave to defend will be given. *Alloway* v. *Pembranke, supra.*

Leave to sign judgment was refused whilst another action in a different Court was pending. *Craftsman* v. *Hunter,* 8 W. L. R. 435.

Where in a copy of the affidavit served the clause that the plaintiff believed there was no defence on the merits was omitted it was held to be an irregularity, but could be remedied by enlargement and re-service of a true copy. *Craftsman* v. *Hunter, supra.*

In an action by the drawer of a dishonoured bill, a defence that the bill had not been endorsed back by the payee to the drawer was disallowed. On appeal the Court were divided. *Velie* v. *Hemstreet,* 11 W. L. R. 297.

RULE 136.—Notwithstanding the provisions of rule 704, a Judge has no power to abridge the time. *Toronto Railway Co.* v. *Bain,* 4 Terr. L. R. 28.

RULE 140.—Under this rule the Judge has power to strike out sham defences. It is improper, however, to apply to strike out appearance with a view of getting certain paragraphs struck out, the plaintiff should shew a *prima facie* case that the defendant has no defence whatever. *Trumbell* v. *Taylor,* 3 Terr. L. R. 305.

RULE 145.—Before moving for an extension of time for delivering a pleading, application should be made to the opposite party for leave to extend the time by consent, otherwise no costs will be allowed. *Commercial Bank* v. *Crerar,* 3 Terr. L. R. 286.

RULE 146.—Facts and not information must be pleaded. *Schweiger* v. *Vineberg* (Man.), 2 W. L. R. 266.

RULE 147.—The practice allows a defendant to set up a counterclaim which raises questions between himself and the plaintiff along with other persons, and to add such other persons as parties by

the counterclaim. For the procedure see English Order XXI., rr. 11-15, now incorporated as Rules 181-184. *Robertson* v. *White,* 5 Terr. L. R. 311. A claim sounding in damages and arising out of the contract sued upon by the plaintiff is a matter of set-off and not of counterclaim. *Stevens* v. *Keenan,* 3 Terr. L. R. 244. *Lillie* v. *Thomas,* 1 W. L. R. 467.

In a replevin suit a counterclaim for a return of chattels is irregular; the right to their return should be set up in the defence. *Seeman* v. *Erickson,* 3 Terr. L. R. 287.

In an action for goods sold and delivered a counterclaim for damages for malicious prosecution was struck out. *Macdonald Co.* v. *Logan,* 2 W. L. R. 23.

A judgment may be the subject of a counterclaim; a claim for a District Court judgment and costs of appeal to the Supreme Court is only one cause of action. *Mah Po* v. *McCarthy,* 18 W. L. R. 656.

RULE 148.—Before applying to strike out a pleading for want of particulars an application must first be made for further and better particulars under rule 149. *Boardman* v. *Handley,* 4 Terr. L. R. 266.

RULE 149.—If the claim is obscure an amendment may be ordered. As stated by Harvey, J., in *Flora* v. *Shandro* (Alb.), 8 W. L. R. 426, "the defendant is entitled to know whether any paragraph of a statement of claim means anything without having to guess at it."

RULE 152.—Various defences other than "not guilty by Statute" were considered in *Daniel* v. *C. P. R.,* 6 W. L. R. 538.

RULE 154.—As to delivery of abstract and tender of conveyance before action brought for purchase price, see *Mayberry* v. *Williams,* 3 Sask. L. R. 350.

RULE 156.—A reply setting up an allegation of fraud was held to be bad in law. *Boardman* v. *Handley,* 4 Terr. L. R. 266.

RULE 157 —A defence stating with regard to each paragraph that the defendant specifically denied the allegations contained in paragraph of the statement of claim is bad, and on application judgment will be given on admissions. *Lougheed* v. *Hamilton* (Alb.), 7 W. L. R. 204.

A denial that the defendant was indebted to the plaintiff, as alleged, is bad, as being too general. *Prince* v. *Richards,* 7 W. L. R. 836.

RULE 162.—Neither a debtor nor his assignee can institute an action to set aside a deed made by the debtor on ground of its being a fraud on his creditors. *Diehl* v. *Wallace,* 2 W. L. R. 24.

A defendant may be granted leave to amend and set up fraud, but he must shew a very strong case. *Bishopric* v. *York* (Alb.), 7 W. L. R. 206.

RULE 167.—Matter in defence tending to embarrass will be struck out less freely than in statement of claim. *Davis* v. *Patrick*, 2 Terr. L. R. 9.

A pleading will not be struck out simply because it contains evidence or is prolix, unless outrageously prolix. *Sack* v. *Construction Co.*, 7 W. L. R. 653.

Where the statement of claim shews no relief that can be granted by the Court it will be struck out. *Gray* v. *Balkwill*, 5 W. L. R. 257.

A claim for wages due to plaintiff and daughter was struck out, there being nothing to shew whether plaintiff claimed because his daughter was a minor or as assignee. *Stater* v. *Tunnidiffe*, 3 W. L. R. 447.

A part of a defence was struck out as embarrassing which alleged that another party should be made a defendant. The proper procedure is to apply to have the other defendant added. *Paul* v. *Flinn*, 2 Terr. L. R. 406.

A paragraph in defence as to offer of apology in a libel suit allowed. *Goode* v. *Journal Publishing Co.*, 6 W. L. R. 511.

And see also, *Schweiger* v. *Vineberg*, 2 W. L. R. 266 (goods sold and delivered). *Cockshutt* v. *Wilkerson*, 3 W. L. R. 175 (sale of machinery), and *Pershing* v. *Nason*, 4 W. L. R. 10 (specific performance.)

As to ordering particulars on application to strike out pleading as embarrassing, see *Reid* v. *Nelles*, 15 W. L. R. 578.

RULE 170.—In an action on a lien note declared due by the plaintiff under an acceleration clause, it is not necessary to allege that the plaintiff has reasonable ground for declaring it due. *McLeod* v. *Delaney*, 3 W. L. R. 321.

In an action of detinue the effect of the misdescription of a horse was considered in *Pearce* v. *Hart*, 1 W. L. R. 476.

When a note is not payable at any stated place it is not necessary to allege or prove presentment. *Canadian Co-operative Co.* v. *Trauniczek*, 1 Sask. L. R. 143.

RULE 178.—A copy of the defence must be served as well as filed. *Massey-Harris* v. *Hutchings*, 3 W. L. R. 252.

The fact of having applied for and obtained extension of time for delivering defence from the plaintiff does not stop the defendant from applying to be struck out as improperly joined. *Waterous Engine Works* v. *Howland*, 6 W. L. R. 541.

See also note to rule 145.

RULE 192.—A reply delivered after the time for reply is not invalid, and will not be struck out. *Clarke* v. *Fawcett,* 5 W. L. R. 322.

RULE 196.—A conditional payment in was allowed out regardless of the condition in *Canada Elevator Co.* v. *Kaminski* (Man.), 7 W. L. R. 129.

Where the plaintiff claimed a declaration of right, and the defendant alleged the claim did not shew a right to a declaration, but to a sum of money, which he paid into Court, it was held that the plaintiff could not take the money out and proceed with the declaration. *Masterson* v. *Dorer* (B.C.), 19 W. L. R. 622.

RULE 221.—The rule only applies when pleading obviously discloses no cause of action. *Boardman* v. *Handley,* 4 Terr. L. R. 266, and does not apply when an intricate point of law is disclosed. *Kew* v. *Watt,* 7 W. L. R. 62, 1 Sask. L. R. 11.

An application to strike out parts of a defence, admitted on an examination for discovery to be untrue, refused. *Owen* v. *Tinning,* 3 Terr. L. R. 403.

Where the statement of claim is clearly divisible into two parts an application under this rule can be made in regard to either of the separated parts as a whole. *Voorhees* v. *Holland,* 9 W. L. R. 687, but generally the application must deal with the claim as a whole and not with separate paragraphs. *McEwen* v. *North West Coal & Navigation Co.,* 1 Terr. L. R. 203.

A claim, referring to an agreement for sale of lands which by the Statute of Frauds, must be in writing, but not stating the agreement is in writing, is not fatal. *Voorhees* v. *Holland,* 9 W. L. R. 687, and cf. *Fraser* v. *Pape* (1904), 91 L. T. 340.

RULE 222.—But if there can be no consequential relief, there must be a cause of action. *Viola S. D.* v. *Canada Sask. Land Co.,* 16 W. L. R. 176, following *Offin* v. *Rochford Rural District* (1906), 1 Ch. 342.

RULE 224.—There is a default if the defence is filed but not served, or served but not filed. *Massey-Harris Co.* v. *Hutchings,* 3 W. L. R. 252. It is not necessary to make an affidavit proving the non-filing. *Idem.*

RULE 229.—In a claim for recovery of land and mesne profits the defendant entered no defence, but counterclaimed for moneys lent. Held plaintiff entitled to sign judgment by default and apply in Chambers for damages for mesne profits. *Tunnicliffe* v. *Pollard,* 14 W. L. R. 214.

RULE 232.—From dictum in *Tunnicliffe* v. *Pollard,* 14 W. L. R. 214, it appears that application should be made in Chambers.

RULE 239.—The following are the cases provided by the Judicature Act:—Actions for libel, slander, criminal conversation, seduction, malicious arrest, malicious prosecution, false imprisonment, whatever be the amount claimed, actions arising out of tort, where the amount claimed exceeds $500, and actions on contract or debts where the amount claimed exceeds $1,000.

Where the claim is such that it cannot be tried by a jury, and there is a counterclaim, arising out of the same transaction, which, if the defendant had sued as a separate action, could be tried by a jury, a jury will not be allowed. *Friel* v. *Stinton,* 5 Terr. L. R. 252.

RULE 249—When the action is discontinued before appearance is entered the defendant is still entitled to his costs. *McLorg* v. *Johnston,* 6 W. L. R. 369.

Where an action was wrongly brought in the District Court, and defence filed, a plaintiff was not allowed to bring an action in the Supreme Court for the same matter, until he had obtained leave to discontinue former action. *Craftsman* v. *Hunter,* 8 W. L. R. 435.

RULE 258.—The fact that a proposed amendment sets up a new cause of action is not necessarily fatal to an application being granted, even if made at the trial. *Anderson* v. *Osborne,* 5 W. L. R. 24. But where the information came to the plaintiff on the examination for discovery, and he did not apply to amend till the trial, it was refused. *Moore Milling Co.* v. *Laird,* 9 W. L. R. 199. And an application for amendment after the evidence for the defence was all in was disallowed in *Moran* v. *Graham,* 2 Terr. L. R. 204. In *Porter* v. *Schwartz,* unreported, Mr. Justice Johnstone allowed the defendant to set up a new plea from evidence given by the plaintiff.

An amendment to a statement of defence 18 months after its delivery was allowed in *McPherson* v. *Edwards,* 13 W. L. R. 440.

RULE 275.—In order to dismiss an action for failure to comply with an order for discovery, the order must be endorsed with a proper notice or warning. *Doidge* v. *Town of Regina,* 2 Terr. L. R. 337.

RULE 278.—An examination should be confined to the matters in question in the action. Consideration of certain questions was discussed in *Adams* v. *Hutchings,* 3 Terr. L. R. 181. *Winnipeg Granite & Marble Works* v. *Bennotto,* 19 W. L. R. 567.

Where the refusal to answer raises a point of law the party should be ordered to attend and answer before attachment proceedings are taken. *Adams* v. *Hutchings, supra.*

Questions, the answers to which, if answered, might result in oppressive or vexatious conduct on the part of the plaintiff will not be permitted. *Klenman* v. *Schmidt,* 18 W. L. R. 393.

RULE 279.—A station agent is an officer of a railway company, a track foreman is only a servant, and generally as to whether employes of a railway company are officers or servants see *Eggleston* v. *C. P. R.*, 5 Terr. L. R. 503, and the Ontario cases quoted therein.

RULE 283.—Plaintiff paid defendant insufficient conduct money when serving him. Defendant accepted the money, but did not attend. An order was made that defendant attend on payment of the balance of conduct money, but as both parties were in default no costs were allowed. *Cyr* v. *O'Flynn*, 6 W. L. R. 353.

RULE 291.—It is not a ground for resisting production of a document that a person not before the Court has an interest in the document. *Carte* v. *Dennis*, 4 Terr. L. R. 357.

Before an attachment for contempt in not producing documents can be got, an order for production must be obtained. An order for production must state the time within which the books are to be produced, and the copy served must be endorsed with a notice of the consequences of neglect. *Smith* v. *MacKay*, 4 Terr. L. R. 202.

RULE 293.—On a motion to strike out for non-attendance, a certificate of default should be produced, or it must be shewn by affidavit that the examiner was present or available as well as the fact that witness did not attend. *Anderson* v. *Imperial Development Co.* (Man.), 16 W. L. R. 51.

RULE 306.—An admission made in a pleading cannot be withdrawn unless evidence is produced to shew that it was made inadvertently and that it is incorrect. *Gesman* v. *City of Regina*, 7 W. L. R. 307, 1 Sask. L. R. 39.

RULE 311.—The rule applies only to cases in which admissions are made by notice or under rule 396 or otherwise, and to cases in which admissions are made expressly or impliedly in the pleadings.

It would appear from the decision in *White* v. *Edgar*, 7 W. L. R. 634, admissions in examinations for discovery are outside the rule.

Judgment on admissions can be obtained for part of the claim. *Kelly* v. *Kelly*, 9 W. L. R. 509. Jessel, M.R., interpreted the rule in *Thorpe* v. *Houldswork*, 3 Ch. D. 640 as enabling either party to get rid of so much of the action, as to which there is no controversy.

Where there is a counterclaim, judgment may be given on the claim, but execution may be stayed until the hearing of the counterclaim. *Wells* v. *Knott*, 15 W. L. R. 285.

RULE 316.—As to procedure and mode of settling accounts on a reference to the Local Registrar to take accounts, see *Calvert* v. *Forbes*, 3 Terr. L. R. 307, wherein it was also held that the rules of procedure in England are applicable, and that the Judge

in directing a reference has power to make such an order as will keep him seized of the matter, otherwise the further consideration must be made to the Court.

RULE 337.—The debtor or person who is to pay must be specifically cited to appear, and the general direction "to all persons concerned" is not a sufficient compliance with the rule.

The property must be described with sufficient certainty. *Lamb Watson Lumber Co.* v. *Jones,* 1 Sask. L. R. 386.

RULE 349.—Where counsel for the plaintiff appears and is not ready to go on because of the plaintiff's absence, the rule applies. *Burke* v. *Nolin,* 8 W. L. R. 830.

The proper course afterwards is not by way of appeal, but to apply to the Judge to restore the cause, per Cotton, L.J., in *Vint* v. *Hudspeth,* quoted *supra,* and followed by Rimmer, D.C.J., in *Stender* v. *McGregor,* unreported.

RULE 351.—See Notes to Rule 131.

RULE 358.—As to the practice when further consideration is reserved, see *Adams* v. *Hutchings,* 3 Terr. L. R. 242.

RULE 361.—Where one of the parties dies before the trial his affidavit may be admitted and considered *quantum valeat* at the trial. *MacDonald* v. *Delion* (Y), 17 W. L. R. 614. The cases of admitting affidavits of a deceased party were fully considered by Mr. Justice Rose in *Randall* v. *Atkinson,* 30 O. R. 242.

RULE 365.—An application by a Company as plaintiffs to have their manager's evidence taken on commission on the ground of great loss and expense was refused in *Toronto Manufacturing Co.* v. *Ideal House Furnishers* (Man.), 17 W. L. R. 621.

An order having been made to take evidence before a magistrate abroad it was held that the evidence taken before his successor could not be used, though agents appeared for each side, and no objection was raised at the time. *Claverie* v. *Gory,* 4 Terr. L. R. 470.

Under a general commission to examine witnesses abroad on behalf of both parties, without naming the persons, it is not permissible for the plaintiff to give his evidence. *Wright* v. *Shattock,* 4 Terr. 317.

Under this rule a Judge may order a person who has refused to make an affidavit to attend and be examined. *Grindle* v. *Gillman,* 4 Terr. L. R. 180.

RULE 408.—A witness, cross-examined on an affidavit used in an interlocutory application, who refused to produce an original document referred to in his examination, may be required to attend at his own expense and produce the original. *Wilson* v. *Rannie* (Y.), 1 W. L. R. 397.

RULE 409.—Affidavits wrongly intituled or incomplete may be taken off the file and re-sworn. *Sandhoff* v. *Metzer,* 4 W. L. R. 18; *Templeman* v. *Wallace,* 4 Terr. L. R. 340.

On a motion to confirm a sale under execution the affidavit may or may not be intituled in the cause or in the Land Titles Act. or may not be intituled at all. *John Abell Co.* v. *Scott,* 6 W. L. R. 272.

RULE 422.—A substantial compliance with the rule is sufficient. *Sandhoff* v. *Metza,* 4 W. L. R. 18.

RULE 423.—Under this rule an affidavit wrongly intituled was received. *Craftsman* v. *Hunter,* 8 W. L. R. 435, an affidavit where a pen had been run through the commissioner's certificate on the exhibits, *Sandhoff* v. *Metzer,* 4 W. L. R. 18, an affidavit intituled in a wrong cause, *Fey* v. *Seimor* (Y.), 4 W. L. R. 145, and an affidavit intituled against only one of the defendants. *Imperial Elevator Co.* v. *Jesse,* 6 W. L. R. 381.

See also note to Rule 409.

RULE 425.—By "a Solicitor acting for the party" is meant a solicitor who is not an independent commissioner and may include a solicitor not acting for the parties in the suit. *Gougeon* v. *Thompkins,* 1 W. L. R. 114.

RULE 432.—Exhibits need not be filed with affidavits on an application in Chambers. *Lassen* v. *Bauer,* 5 Terr. L. R. 458.

RULE 433.—As to effect of commissioner's certificate being crossed out, see note to Rule 423.

RULE 444.—Any order can be varied at any time before being entered. *Coe* v. *Smiley,* 16 W. L. R. 486.

The judgment roll need not be sealed. *American Abell Engine & Thresher Company* v. *Snider,* 4 W. L. R. 542.

RULE 447.—An application to strike out a defence for non-compliance with an order for discovery without the prescribed endorsement was dismissed. *Leadley* v. *Gaetz,* 5 Terr. L. R. 484.

RULE 456.—The Court will stay execution pending an appeal if it is established or seems probable that the party realizing the money would be unable to pay it back should he fail in the appeal. *Huggard* v. *Ontario & Saskatchewan Land Co.,* 1 Sask. 52.

RULE 462.—In the case where an execution is issued against a firm, and one of the parties denies being a member of the firm, see *Westman* v. *Ogmundson,* 3 Terr. L. R. 442.

RULE 464.—A præcipe need not be personally signed by the Solicitor. As to correction of errors, see *Carbonneau* v. *Letourneau,* 1 W. L. R. 273. On appeal, 2 W. L. R. 113.

RULE 466.—An execution expiring on the 20th of the month can be renewed on the 20th day of the same month two years after. *McDonald* v. *Dunlop,* 2 Terr. L. R. 238.

RULE 474.—The Court has also power to temporarily stay an execution for an almost infinite variety of circumstances in order that the ends of justice may be accomplished. *Humberstone* v. *Trelle,* 14 W. L. R. 145.

RULE 477.—A Sheriff's seizure will hold against a liquidator appointed by a subsequent winding-up order under the Provincial Companies Winding-up Ordinance, but contra, when the company is being wound up under the Dominion Act. *Re Regina Windmill & Pump Co.,* 10 W. L. R. 65.

RULE 477.—Land the property of a school board is liable to seizure. *Lee* v. *Broley,* 11 W. L. R. 38.

RULE 478.—The rule is qualified by Rule 481. *Jobin-Marrin Co.* v. *Betts,* 1 W. L. R. 369.

RULE 478.—There must be a change of possession similar to that which is registered under the Bills of Sale Ordinance. *Mueller* v. *Cameron,* 2 W. L. R. 524; *McCormick* v. *Anderson,* 5 W. L. R. 76; *Re Godkin,* 9 W. L. R. 430.

Per Wetmore, C.J.—"I am inclined to think that the onus of proving want of notice is on the person purchasing from the execution creditor." *McCormick* v. *Anderson, supra.*

Knowledge of the writ by the defendant's son was held under the circumstances of the case to be notice to the defendant in *Roberts* v. *Gray,* 17 W. L. R. 277.

RULE 480.—An execution against goods placed in the Sheriff's hands subsequent to the making of a chattel mortgage by the debtor on the goods seized attaches only to the equity of redemption and does not share with executions placed in his hands prior to the date of the mortgage. *Howard* v. *High River Trading Co.,* 4 Terr. L. R. 109.

RULE 480.—A mortgagee can pay off a prior execution without paying off subsequent executions and have his title cleared. *Trust & Loan Co.* v. *Cook,* 3 Sask. L. R. 210.

RULE 481.—Lien notes given for property, which would be otherwise exempt, sold voluntarily by the debtor at an auction sale, are liable to seizure. *Jones* v. *Jesse,* 10 W. L. R. 627.

Book debts owing by the execution debtor are not liable to seizure. *Jobin-Marrin Co.* v. *Betts,* 1 W. L. R. 360.

RULE 486.—Execution may issue against lands where the amount of the original judgment is less than $50, if the judgment, with accrued interest, amounts to $50. Per Newlands, J., in *Kirby* v. *McGurk* (unreported).

An execution does not bind a homestead: *Bocz* v. *Spiller,* 2 W. L. R. 280; *Meunier* v. *Dorey,* 2 W. L. R. 331, and "homestead" is not confined to land patented but includes any 160 acres used by defendant as his home. *John Abell Co.* v. *Scott,* 6 W. L. R. 272.

An execution put against a homestead can be removed by any one who has purchased from the defendant, provided it was a homestead up to the time of sale. *Wilkie* v. *Jellett,* 26 S. C. R. 282.

But a homesteader cannot remove an execution, though the execution does not bind the land so long as it remains a homestead. *Gilmore* v. *Callies,* 19 W. L. R. 545.

A blacksmith's shop is liable to execution. *Eastern Townships* v. *Drysdale,* 2 W. L. R. 423.

RULE 490.—The execution creditor must pay for the certificate of withdrawal forwarded to the Registrar. *Re Solicitors,* 12 W. L. R. 687.

RULE 501.—On an examination in aid of execution the defendant must give the exact location of bank notes admitted to be in his house. *Iverson* v. *Enwright,* 2 W. L. R. 20.

The examination is intended to be a cross-examination, and that of the severest kind. *Republic of Costa Rica* v. *Strongsley,* 16 Ch. D. 8, quoted in *Clinton* v. *Sellars,* 6 W. L. R. 367.

An examination in aid of discovery will not be allowed to be read on a motion to commit under the Imperial Debtors Act of 1869. *Fraser* v. *Kirkpatrick,* 4 W. L. R. 1.

RULE 505.—No præcipe is required. *Nohren* v. *Auten* (Alb.), 15 W. L. R. 417. As to what constitutes a liquidated debt under the rule, see *Stinson* v. *Hamilton,* 1 W. L. R. 20. Affirmed, 3 W. L. R. 72. A claim for necessaries supplied to defendant's wife and children is without the rule. *Parkin* v. *Parkin,* 7 W. L. R. 66. A claim for damages arising out of tort or contract does not give the right. *McIntyre* v. *Gibson,* 8 W. L. R. 202. *Hart* v. *Dubrule* (Man.), 15 W. L. R. 602.

The following have been held liable to attachment: Book debts, *Jobin-Marrin* v. *Betts,* 1 W. L. R. 369 (though not liable to execution), money to become due under a mortgage. *McPherson Fruit Co.* v. *Hayden,* 2 W. L. R. 427, *Stimson* v. *Hamilton,* 3 W. L. R. 72, proceeds of sale of exemptions. *Slater* v. *Rodgers,* 2 Terr. L. R. 310, a cheque given by a garnishee to a bank to hold at their

order until the purchaser of land showed title. *Gross* v. *Mihm & Dundas,* 15 W. L. R. 172, a debt due to one of two defendants. who are jointly liable. *Nohren* v. *Auten, supra.*

The following are not attachable: An undue promissory note. *Simpson* v. *Phillips,* 3 Terr. L. R. 385, money in the hands of the Local Registrar. *Ross* v. *Goodier,* 5 W. L. R. 393. *Otto* v. *Connery* (Man.), 5 W. L. R. 403, money placed by a third party with returning officer as a deposit for a candidate. *Creagh* v. *Sutherland,* 3 Terr. L. R. 303, a claim under an insurance policy. *Hartt* v. *Edmonton Steam Laundry Co.* (Alb.), 10 W. L. R. 664. A summons served on the last day of the month does not attach the month's salary payable on the last day of the month. *Main Bros.* v. *McInnis,* 4 Terr. L. R. 517.

The affidavit in support may be sworn several days before the summons is issued. *Addison* v. *Dickson,* 7 W. L. R. 291; *Stewart and Matthews Co.* v. *Ross,* 15 W. L. R. 425. It must not be sworn by a student. *Mohr* v. *Parks* (Alb.), 15 W. L. R. 250, unless he states his agency. *Imperial Bank* v. *Miller,* 13 W. L. R. 260.

The affidavit need not state grounds of belief. *Nohren* v. *Auten* (Alb.), 15 W. L. R. 417; *Stewart and Matthews Co.* v. *Ross,* 17 W. L. R. 179; *Marcy* v. *Pierce,* 4 Terr. L. R. 186, overruling *Salander* v *Jensen,* 6 W. L. R. 401. The affidavit must swear positively as to the debt. *Imperial Bank* v. *Miller, supra.* Otherwise it will be set aside. *Rumley* v. *Saxauer,* 6 Terr. L. R. 63.

An affidavit not intituled in the cause is a defect that cannot be cured. *Mohr* v. *Parks, supra.*

An omission to state the nature of the claim in the affidavit is fatal. *Richardson* v. *Roberts,* 10 W. L. R. 497.

RULE 507.—The order does not make any provision for a stop order; such an order cannot be made before judgment. *Moline Plow Co.* v. *Clement,* 5 W. L. R. 32.

RULE 511.—A garnishee paying money into Court must pay in the whole amount of his indebtedness to the defendant. *Calder* v. *Mieklejohn,* 3 Terr. L. R. 407. Judgment against a garnishee in default may be given ex parte. *Bailey Supply* v. *Hunter, per* Newlands, J., (unreported) and presumably without notice of motion. *Hunter* v. *Collins,* 11 W. L. R. 85.

RULE 512.—In a contest as to whether there is any debt to be attached the onus is on the judgment creditor. *Genge* v. *Wachter,* 4 Terr. L. R. 122. It was held by the majority of the *Court en banc* that the defendant was not within "any other person interested," and could not make application to fix the time for determining the garnishee's liability. *Woodley* v. *Harker,* 6 W. L. R. 102.

The form of judgment against a garnishee who does not admit the amount of his liability would be to levy the debt due from gar-

nishee to principal debtor, or so much thereof as will satisfy the judgment against the principal debtor. *Calder* v. *Mieklejohn,* 3 Terr. L. R. 407.

RULE 514.—Where there are conflicting claims a garnishee cannot interplead, he must pay into Court and suggest other claims. *Mears* v. *Arcola Wood Co.,* 6 W. L. R. 547, on appeal, 8 W. L. R. 840, 1 Sask. 191.

RULE 520.—On an *ex parte* application an interim injunction only will be granted. *Clinton* v. *Sellars* (Alb.), 6 W. L. R. 788.

An injunction will not be granted to restrain the collection of a tax except when necessary to protect the rights of a citizen, as plaintiff has otherwise an adequate remedy. *Dominion Express Co.* v. *City of Brandon* (Man.), 12 W. L. R. 498.

On an application for an injunction, inconvenience to the public cannot be set up as against private parties. *Patton* v. *Pioneer Navigation and Sand Co.,* 5 W. L. R. 40.

Where the plaintiff's claim was not free from doubt and the injury to the defendant by an injunction and appointment of a receiver would be great and plaintiff's chance of injury in any case small, an injunction was refused. *Reynolds* v. *Urquhart,* 5 Terr. L. R. 413.

RULE 521.—On an application *ex parte* all facts must be brought before the Judge; an injunction obtained by misrepresentation or inaccurate statements will be dissolved on that ground only. *Bashford* v. *Bott,* 12 W. L. R. 428.

A plaintiff suing on behalf of creditors was not entitled before judgment to an interim injunction to restrain a disposition of the property by the defendant in the case of *Pacific Investment Co.* v. *Swan,* 3 Terr. L. R. 125. See also *Lankin* v. *Walker,* 12 W. L. R. 320, and *Traders Bank of Canada* v. *Wright* (Man.), 8 W. L. R. 208.

An interim injunction to restrain the dealing with land was granted in *Bashford* v. *Bott,* 12 W. L. R. 428.

RULE 532.—The Court will not, except in extraordinary circumstances, grant a mandamus to a J. P. to include or exclude evidence at a preliminary hearing. *R.* v. *Martin,* 16 W. L. R. 166.

RULE 537.—In *Imperial Bank of Canada* v. *Twyford,* 1 W. L. R. 157, a receiver was appointed to receive the rent of two lots owned by the defendant, subject to a mortgage. See, also, cases reviewed therein, and as to equitable executions, *McGregor* v. *Withers,* 1 W. L. R. 429, and *C. P. R.* v. *Silzer,* 14 W. L. R. 274.

A receiver may be appointed to receive money from and give a discharge to the Crown under certain circumstances. *Burns* v *Munn* (Y.), 2 W. L. R. 128, but a receiver of rents due under a contract with the Crown was refused.

If a partnership cannot go on and judgment would be given dissolving it, on a partnership action a receiver will be appointed as a matter of course. *Kelly* v. *Kelly* (Man.), 7 W. L. R. 542.

If the party actually carrying on the business has not been guilty of such misconduct that it is unsafe to trust him, the Court generally appoints him receiver without salary quoted, *supra.*

An application by a judgment creditor for the appointment of a receiver to receive the debtor's salary as a Dominion employee may be appointed, when it is shewn that there is some salary due and unpaid, but no appointment will be made to receive salary subsequently falling due. *Forin* v. *Wagner,* 9 W. L. R. 593.

The appointment of a receiver to collect dues of members of a trade union was refused in *Cotter* v. *Osborne,* 11 W. L. R. 569.

For effect of appointment of receiver by Foreign Court on debts in the province, see *Bank of Nova Scotia* v. *Booth* (Man.), 10 W. L. R. 313.

RULE 538.—For procedure where money is owing to receiver and he gave no security and took none, and the action is discontinued, see *Le Brun* v. *Le Brun* (Y.), 11 W. L. R. 267.

RULE 540.—A receiver must use the same diligence that a man of ordinary prudence would exercise in his own affairs; and when it appeared that he had exercised such supervision as was possible for one in his position, he was not held responsible for a deficit which had occurred. *Plisson* v. *Diemert,* 6 Terr. L. R. 160.

A receiver who does not pay money promptly into the bank will be liable for any interest charged on over drafts. *Town of Emerson* v. *Wright* (Man.), 5 W. L. R. 365.

RULE 545.—An order for a writ of attachment can be obtained before appearance is entered. Also an application to set aside the writ. *Sawyer-Massey Co.* v. *Carter,* 9 W. L. R. 675.

Quære, whether the procedure is applicable to an action of tort. It is not applicable where damages might be given, not merely by way of restitution, but which might be of a punitive character, as in the case of a claim for criminal conversation. *Hime* v. *Coulthard* (Man.), 15 W. L. R. 288.

Where the defendant is outside the jurisdiction, see *Emperor of Russia* v. *Prospouriakoff* (Man.), 7 W. L. R. 766, 8 W. L. R. 461, and 10 W. L. R. 1.

RULE 554.—To support a writ of replevin it is not necessary to allege in the claim an unlawful detention in actual words, if the facts alleged shew such to be the case. *Critchley* v. *Simers,* 3 Terr. L. R. 135.

In a replevin suit a counterclaim for a return of chattels is irregular; the right to their return should be set up in the defence. *Seeman* v. *Erickson,* 3 Terr. L. R. 287.

Replevin of land scrip was allowed in *Wright* v. *Battley,* 1 W. L. R. 563, notwithstanding order of Governor in Council, prohibiting assignments.

A landlord whose rent was payable in grain, replevying more than he was entitled to, was ordered to pay part costs in *Richey* v. *Rear* (Man.), 5 W. L. R. 420.

RULE 555.—The affidavit in support of a writ of replevin may be sworn before the issue of the writ of summons, but in such case it should not be intituled in the cause. *Crichley* v. *Simers,* 3 Terr. L. R. 135.

A writ of replevin issued on an insufficient affidavit is not void, but irregular, which irregularity may be waived. A delay by the defendant of one month and recognition of the replevin in his pleadings constitutes a waiver. *Seeman* v. *Erickson* 3 Terr. L. R. 294.

Application to set aside the writ on the following grounds was refused: (1) That the affidavit was sworn before the issue of the writ in the action. (2) Replevin bond was executed before issue of writ in action. (3) A misnomer of defendant in the affidavit and other proceedings. (4) That there was only one surety in the bond. *Marcy* v. *Pierce,* 4 Terr. L. R. 186. Writ will be set aside on grounds that the manner of wrongful taking is not set out or if the affidavit does not shew the Judicial District in which the property is situated. *Thornquist* v. *Peters,* 3 W. L. R. 488.

RULE 556.—An affidavit of justification on a replevin bond is not necessary. *Marcy* v. *Pierce,* 4 Terr. L. R. 186.

Damages to the defendant caused by replevin must be recovered from the replevin bond. *Oliver* v. *Slater,* 16 W. L. R. 107.

RULE 559.(1)—A stakeholder holding a horse from another party whose whereabouts are unknown, being refused an indemnity by the plaintiff, was held justified in interpleading. *McCullum* v. *Williams,* 1 W. L. R. 257.

Interpleader proceedings are confined to the persons mentioned in the rule. *Eastern Townships Bank* v. *Drysdale,* 2 W. L. R. 423.

A defendant in a suit for balance of the purchase-price of land, who admitted liability, but stated that another party claimed the land and had brought action, was not allowed to interplead in *Davison* v. *Lehberg* (Man.), 13 W. L. R. 719.

As to interpleader by a stakeholder where the contract may be a wagering contract, see *Re Hyndman* (Alb.), 12 W. L. R. 166.

Where a suit is proceeding against the defendant, and money is garnisheed and a claim is made by another party, the defendant cannot interplead; he should proceed under Rules 514, 515. *Mears* v. *Arcola Wood Working Co.,* 6 W. L. R. 547. Affirmed in appeal, 8 W. L. R. 840.

(2) The property must be very clearly shewn to be in one party to warrant a sheriff's motion for interpleader being dismissed. *Brownlee* v. *Eads,* 2 W. L. R. 123.

The sheriff must apply for relief promptly.

If the sheriff pay over the proceeds of execution to the judgment creditor, he is not entitled to relief, or, even if he pays part only. *Hogan* v. *Boozan,* 8 W. L. R. 548.

He cannot apply unless goods or money are actually in his hands.

RULE 560.—The provisions must be strictly followed, and the sheriff is not in a position to interplead until after the expiration of the four days. *Sanderson* v. *Hotham,* 9 W. L. R. 434.

It is not sufficient for a sheriff to wait only four days after giving notice, but before interpleading he must allow a reasonable time to execution creditors to investigate the claim. *Fraser* v. *Ekstrom,* 7 Terr. L. R. 1.

A delay of three weeks after receipt of claimant's notice before interpleading will not disentitle sheriff to relief unless the party has been prejudiced.

Quære, whether a sheriff who has taken an indemnity from one of the parties has lost his right to interplead—but it is not open to such party to take the objection. *McCallum* v. *Schwan,* 5 Terr. L. R. 471.

A sheriff was not allowed service fees on an interpleader summons in *Commercial Bank* v. *Fehrenback,* 7 Terr. L. R. 8. This decision does not seem to have been followed in practice; but under the rules service by a coroner might be taxed.

If a claim is put in for part of property seized, which is dealt with by interpleader proceedings, the claimant cannot bring action for other property under seizure by virtue of the same writ. *Belcher* v. *Hudson's Ltd.,* 12 W. L. R. 25.

RULE 568.—Neither a Judge nor Court en banc can direct an interpleader issue to be tried by a jury. *McIntosh* v. *Shaw,* 4 Terr. L. R. 97.

In an interpleader issue where the property seized was in the apparent possession of the execution debtor, and it was claimed by his wife, the wife was under the circumstances made the plaintiff. *Schwartz* v. *Davidson* (Y.), 6 W. L. R. 699. Generally the execution creditor is plaintiff. *Re Blackwell Interpleader* (1912) unreported.

In an interpleader issue between wife of debtor and the creditors, evidence as to whether or not a transfer was not a mere device to defeat creditors was allowed. (Fraudulent transfers discussed). *West* v. *Ames Holden & Co.,* 3 Terr. L. R. 17.

"The form of issue is of no consequence because it is directed for the purpose of informing the conscience of the Court," per Bramwell, L.J. As the issue is only for the above purpose evi-

dence cannot be given to prove that non-existence of the debt on which the execution was issued, whether the creditor be plaintiff or defendant in the issue. *Turner* v. *Tymchorak* (Man.), 8 W. L. 484.

RULE 578.—In the absence of any direction the plaintiff, and not the Local Registrar, has the conduct of a judicial sale *Pruden* v. *Squarebrigs,* 2 Terr. L. R. 200.

RULE 581.—Where the plaintiff who had conduct of the sale purchased the property without leave, confirmation was refused.

Any person having an interest in the proceeds of the sale may object to confirmation. *Pruden* v. *Squarebriggs,* 2 Terr. L. R. 200.

A purchaser at a sale duly confirmed will be protected though proceedings were not brought to the knowledge of a defendant. *Conrad* v. *Alberta Mfg. Co.,* 4 Terr. L. R. 322, confirmed on appeal 412.

A purchaser cannot enter into possession of the land or cut grain thereon before the confirmation of the sale and service of order confirming. *Stevens* v. *Ullerich,* 17 W. L. R. 568.

If the land is sold by order of the Court under a guarantee by the sheriff who conducted the sale that the title is clear, and it is found to be encumbered with unpaid taxes and seed grain liens, the purchaser is entitled to recover against the sheriff. *Semble,* the sheriff has a remedy over against the vendors which he could pursue by Chamber application in the cause. *Moritz* v. *Christopherson,* 18 W. L. R. 63.

RULE 589.—A Judge in Chambers has no jurisdiction to deal with an application which should properly have been made to him in Court, but such application must be dismissed. *Campbell* v. *Fisher,* 3 Terr. L. R. 297.

Where the rules provide that a motion in Chambers shall be made, procedure by summons cannot be adopted. *Dominion Bank* v. *Freedt,* 6 Terr. L. R. 298.

A second application cannot generally be made. *Covert* v. *Janzen,* 9 W. L. R. 133, even though the first application was not dismissed on the merits. *Cyr* v. *O'Flynn,* 5 W. L. R. 524, 6 Terr. L. R. 299.

RULE 590.—The copy of an affidavit need not be an exact copy. It does not necessarily mean a copy free from clerical errors, but the omission of a material portion of the original from the copy makes the copy of no effect. Enlargement may be granted to allow a proper copy to be served. *Craftsman* v. *Hunter,* 8 W. L. R. 435.

An applicant cannot bolster up the material upon which a notice of motion is made by reading further affidavits on the return. *Kerr* v. *Suter,* 5 W. L. R. 256.

Exhibits need not be served except when necessary to make the evidence intelligible. *Fraser* v. *Kirkpatrick,* 4 W. L. R. 1.

RULE 598.—An order that is made without jurisdiction stands, if not appealed against. *Nestler* v. *Dominion Meat Co.,* 13 W. L. R. 241, but an order made in Chambers can be varied by Judge sitting in Court. *idem.*

RULE 600.—The relation of landlord and tenant must be clear from the right to apply. *Porter* v. *Rooney* (Alb.), 8 W. L. R. 289.

RULE 604.—The English Rule provides a list of cases where appearance is unnecessary, which is omitted in these rules.

All parties subsequent in interest should be served. A seed grain lien is a prior encumbrance. *Union Trust Co.* v. *Du Plat,* 7 W. L. R. 459.

RULE 606.—On an originating summons the Court can decide whether executions are binding on land, whether registered or not. *Union Bank* v. *Jordon,* 1 Sask. L. R. 105. *Baker* v. *Gillum,* 9 W. L. R. 436.

A Judge may order sale on a summons asking for sale or foreclosure in his discretion, although the plaintiff asks for foreclosure, and the application is not opposed. *Excelsior Life* v. *Prestniak,* 8 W. L. R. 780, 1 Sask. L. R. 215.

Where there is no appearance an order *nisi* can be served by posting. *Union Bank* v. *McElroy,* 11 W. L. R. 259.

The order was varied and a new date fixed, at the mortgagee's cost, in *Matthew* v. *McLean,* 11 W. L. R. 630; when necessary to protect the estate the costs would be out of the estate.

RULE 610.—A single Judge has power to set aside an *ex parte* order for irregularity. *Jackson* v. *C. P. R.,* 7 W. L. R. 828, 1 Sask. L. R. 84.

RULE 613.—Generally speaking when a Chamber application is dismissed it cannot be renewed. *Cyr* v. *O'Flynn,* 5 W. L. R 524, *Covert* v. *Janzen,* 9 W. L. R. 133.

RULE 614.—When not otherwise provided, the English forms with necessary modifications must be followed: the omission to endorse the name and address of the solicitor is an irregularity, but will be amended. *Beaver Lumber Co.* v. *Eckstein,* 8 W. L. R. 439, 1 Sask. L. R. 134.

RULE 618.—The memo. required by Rule 447, to be endorsed in the copy of the order is not a part of the order, but a notice to the party served.

An omission to state the time within which an act is to be done, does not make it ineffectual, but the Court will grant a final order fixing a time.

No indication of a seal is necessary on a copy, if the seal is pointed out on the original when serving. *Calvert* v. *Forbes* 3 Terr. L. R. 282.

RULE 622.—An appeal from the decision of a local Master is a hearing *de novo,* and the Judge may inquire into matters not contained in the notice of appeal, per Newlands, J., in *Shearer* v. *Trimble.* (Unreported.)

RULE 624.(3)—See *Re Mussetter,* 8 W. L. R. 704.

RULE 630.—If the affidavit is not filed when the notice of the application is served the application must be refused.

Quœre. Whether this rule authorises a direction that the accounts be verified under oath.

The proper practice in order to obtain explanations of any item of account is to formulate objections on the final hearing and have the disputed items adjudicated on in Chambers. *Allan* v. *Kennedy,* 2 Terr. L. R. 285.

RULE 642.—By way of summons under Rule 624, *Re Mussetter,* 8 W. L. R. 704.

RULE 646.—An appeal as to costs lies: (1) without leave when by law the costs are not, (2) with leave when by law the costs are left to the discretion of the Judge. Where, therefore, the grounds of the appeal were that the Judge had ordered costs to be paid out of a fund out of which he had no power to order them to be paid, leave to appeal was not necessary. *Re DeMaurez,* 4 Terr. L. R. 281.

RULE 647.—An application to quash an appeal on the ground that the order appealed from has not been issued was refused. *Bank of Hamilton* v. *Leslie,* 3 W. L. R. 294.

An objection on the ground of irregularity in the proceedings leading up to an appeal should be taken by applying to strike out the case from the list and cannot be taken on argument. *Steele* v. *Ramsay* (Man.), 1 Terr. L. R. 1, 3 Man. L. R. 305.

A new point, not covered by any of the grounds stated in the notice of appeal, cannot be raised at the hearing of an appeal. *Edmonton* v. *Brown & Curry,* 1 Terr. L. R. 454.

An amendment was allowed in the notice of appeal so as to ask expressly for a new trial, but only on the grounds therein stated. *Edmonton* v. *Thomson,* 1 Terr. L. R. 342.

Where a notice by way of cross-appeal was served on one of the defendants who was not an appellant, the Court postponed

the hearing and gave leave to the plaintiff to set down a substantive appeal without costs. *Bent* v. *Arrowhead Lumber Co.,* 9 W. L. R. 301.

RULE 650.—Leave to move for a new trial on the ground of wrongful admission of evidence taken on commission was disallowed in *Edmonton* v. *Thomson,* 1 Terr. L. R. 342, as no objection was taken thereto at the trial, though objection was taken and noted by the Commissioner at the hearing.

RULE 650.—For the principles upon which a Court of Appeal acts in reviewing a case decided by a Judge without a jury on contradictory evidence, see *Knight* v. *Hanson,* 3 W. L. R. 412.

RULE 652.—Poverty is generally sufficient ground to warrant an order, also suspicious circumstances regarding the disposal of property may be taken into consideration. *Dakota Lumber Co.* v. *Rinderknecht,* 2 W. L. R. 86.

RULE 653.—Leave to extend time requires very special circumstances to be shewn, *per* Thesiger, L.J., in *Craig* v. *Phillip,* 7 C. P. D. 249; as to what constitutes special circumstances, see *Munroe* v. *Morrison* (Yuk.), 2 W. L. R. 367, and cases cited there, and 4 W. L. R. 31. *Hill* v. *Barwis* (Alb.), 9 W. L. R. 274; *Stone & Goldstein* (Yuk.), 11 W. L. R. 386.

An order of a Judge refusing an extension of time for filing the appeal books upon an appeal to the Court en banc, is an interlocutory order and an appeal does not lie without the special leave of the Judge who made the order. *Newkirk* v. *Stees,* 14 W. L. R. 707.

An appellant was excused for not proceeding with an appeal because the original document had not been filed by respondent as ordered. *Re Donnelly Tax Sale,* 5 Terr. L. R. 270.

RULE 654.—An amendment to a claim for commission adding an alternative claim for a *quantum meruit,* was allowed in *Boyle* v. *Grassick,* 2 W. L. R. 284. *Ings* v. *Ross* (Alb.), 6 W. L. R. 612, and *Yates* v. *Reser,* 7 W. L. R. 848.

The Court will not, unless good reason to the contrary be shewn, allow costs of an application to dismiss an appeal on the ground of abandonment unless previous demand for payment of costs has not been complied with. *Wessel* v. *Tudge,* 11 W. L. R. 309, following practice laid down by Jessel, M.R., in *Griffin* v. *Allen,* 11 Ch. D. 913.

The Court will not allow an appeal to the Court en banc against an order of committal, if the party is wilfully disobedient, until he has purged his contempt. Where it was urged with full shew of reason that owing to the plaintiff's delay the party

thought an injunction was abandoned, the appeal was allowed. *Moose Mountain Lumber & Hardware Co.* v. *Paradis,* 12 W. L. R. 424.

As to what are subsequent matters in an action for damages against a railway, see *White* v. *Grand Trunk Pacific Railway Co.,* 13 W. L. R. 158.

RULE 663.—For proceedings before the Court en banc, there is no vacation. *Thompson* v. *Sparling* (Yuk.), 6 W. L. R. 143.

Stay of proceedings will be granted on special grounds, *e.g.,* that respondent will be unable to repay the amount if the appeal is successful or upon such other special circumstances as tend to shew appellant will be deprived of fruits of his appeal if execution is not stayed.

A second application will not be heard. *Covert* v. *Janzen,* 9 W. L. R. 133.

A stay of execution does not prevent judgment being entered. *Johnson* v. *Henry* (Man.), 17 W. L. R. 327.

RULE 667.—Where a defendant wishes to set aside a judgment affirmed by the Court of Appeal on the grounds of fraud and discovery of new and material evidence, his proper procedure is by action to set aside the judgment as obtained by fraud. It cannot be re-heard by Court en banc. *Willoughby* v. *Sask. Valley and Manitoba Land Co.,* 17 W. L. R. 177.

RULE 668.—If the appellant, having duly served his notice, has not time to file his appeal, he can apply for an order postponing the appeal to next sittings. *Patterson* v. *Palmer,* 18 W. L. R. 684.

Where the appeal book does not contain any reasons for the conclusion of the trial Judge, the Appeal Court will assume he has found every fact open to him to find under the evidence so as to support this conclusion. *Elliott* v. *Gibson,* 7 Terr. L. R. 96.

RULE 693.—When appearance is filed during vacation, and the defendant has 5 days for delivering his defence, the first day being Sunday does not count. *Handley* v. *Scott,* 2 W. L. R. 341.

In determining the time within which a notice of appeal may be given, days in the vacation are counted. *Thompson* v. *Sparling* (Yuk.), 6 W. L.R. 143.

RULE 704.—Notwithstanding the rule, a Judge has no power to abridge the time for the return of a motion for speedy judgment. *Toronto Railway* v. *Bain,* 4 Terr. L. R. 28.

RULE 709.—Where a plaintiff discontinues before appearance is entered, the defendant is still entitled to tax his costs.

What costs should be allowed discussed in *McLorg* v. *Johnston,* 6 W. L. R. 369.

In foreclosure actions plaintiff may tax solicitor and client costs. *Confederation Life Association* v. *Leier,* 8 W. L. R. 343, 1 Sask. L. R. 131.

The costs of partnership actions are on the same footing as costs of administration and come out of the partnership assets. *Bockfinger* v. *Murray* (Yuk.), 1 W. L. R. 260.

Where a stay of proceedings has been obtained by an estate to allow administration to ascertain the assets, the costs of the application are payable by the estate. *Rat Portage Lumber Co.* v. *Martin,* 2 W. L. R. 85.

Where a principal and agent were sued and the principal did not appear but agent defended and judgment was obtained against the principal, only default costs were allowed. *Waite* v. *Edwards,* 17 W L. R. 566.

RULE 714.—Appearance is necessary before application can be made. *Alloway* v. *Hutchinson,* 3 Terr. L. R. 471; *Fraser & Co.* v. *Dowad,* 6 W. L. R. 336; *Bell Engine* v. *Bruce,* 6 W. L. R. 357.

On application, the state of the record should be disclosed by affidavit, but Judge has power to examine record. *Alloway* v. *Hutchinson,* 3 Terr. L. R. 471.

The grounds of belief must be shewn in the affidavit on the application. A defective affidavit cannot be cured by reading a fresh affidavit on return. *Kerr* v. *Suter,* 5 W. L. R. 256.

An affidavit on information and belief (provided grounds of belief are shewn) that plaintiff is resident *ex juris* is sufficient. *Balcovski* v. *Oldson,* 3 W. L. R. 367.

An affidavit by defendant that "I have in my belief a good defence to the action herein on the merits" is sufficient; he need not swear positively. [*Stimpson* v. *Ross,* 5 Terr. L. R. 485, distinguished.] Such an affidavit by the solicitor would be objectionable unless he swore from personal knowledge. *O. W. Kerr* v. *Lowe,* 3 W. L. R. 400, 6 Terr. L. R. 361.

On the application, the merits of defence cannot be gone into. *Joshua Handy* v. *Pace,* 1 W. L. R. 156. But see comments in *Alloway* v. *Hutchinson,* 3 Terr. L. R. 471.

Security may not be given if no defence on merits. *Murdock* v. *Patton,* and cases quoted therein, 15 W. L. R. 283.

The onus is on the plaintiff to shew that the defendant has no real defence. *Griggs* v. *Grais,* 5 Terr. L. R. 501.

Proceedings are not necessarily stayed if reasonable grounds are shewn. *Wray* v. *C. N. R. Co.,* 12 W. L. R. 14.

A motion to remove stay is by motion in open Court. *Wild* v. *Clausen.*

A second application for security for costs will not be granted when the first has been dismissed because of defective material. *Cyr* v. *O'Flynn,* 5 W. L. R. 525.

As to second application when first dismissed, see *Empire Brewing* v. *Hanley,* 7 Man. L. R. 416.

It is not necessary to endorse order for security for costs as provided by rule 447. *Thomas* v. *Clark* (Yuk.), 1 W. L. R. 512.

An application to extend the time for furnishing security under an order must be made before the expiration of time. *Hutchinson* v. *Twyford,* 3 W. L. R. 66.

No order can be made extending time for giving security for costs. *Canadian Guarantee* v. *Sutter,* 13 W. L. R. 274. But in *Morton* v. *Bank of Montreal,* 3 Terr. L. R. 14, a delay in application, where the other party was not prejudiced, was, under the circumstances, held no bar to the grant.

On appeal, poverty is sufficient grounds for ordering security: *Morton* v. *Bank of Montreal,* 3 Terr. L. R. 14, and especially where party is apparently disposing of his property. *Dakota Lumber* v. *Rinderknecht,* 2 W. L. R. 86.

In case of appeal, as to security, see *Kerfoot* v. *Yead* (Man.), 14 W. L. R. 182.

If plaintiff is a nominal plaintiff, and als· insolvent, he will not be ordered to give security: *Cornell* v. *Taylor,* 31 Ch. D. 34. Otherwise if he has a right, even if a small right and joined with others. *Wallace* v. *Reid,* 10 W. L. R. 22.

Where plaintiff is non-resident, but has property in jurisdiction, granting an order for security is discretionable. *Wills* v. *Timmins,* 2 W. L. R. 121.

A plaintiff's interest in land under an agreement for sale is not such as will allow him to resist an application for an order. *Clark* v. *Fawcett,* 4 W. L. R. 529; *Slack* v. *Malone,* 4 W. L. R. 549.

A non-resident plaintiff had an interest in encumbered real estate under a contract for purchase. Such ownership was not an answer to an application for security. *Ranney* v. *Stirrett,* 18 W. L. R. 5.

For a sufficient answer the defendant must shew assets which the sheriff could readily realize from. In case of a corporation carrying on a branch business within the jurisdiction, it is sufficient to shew assets available for seizure. *Molsons Bank* v. *Hall,* 3 Terr. L. R. 187.

Where a plaintiff had in the jurisdiction live stock and plant, as contractor, they were held not substantial assets, and an order made. *Doidge* v. *Town of Regina,* 2 Terr. L. R. 329.

Grounds of objection to giving security held invalid are:

(1) The affidavit did not positively affirm a good defence.

(2) If so, grounds should be given.

(3) No allegation that solicitor knew the facts. *Canadian Cities* v. *McCallum,* 11 W. L. R. 440.

Security will not be ordered when the defendants have in their hands sufficient funds of the plaintiffs to satisfy their costs if successful. *Seville* v. *Hughes,* 3 Terr. L. R. 387.

A plaintiff, only temporarily resident, may be ordered to give security. *Byers* v. *Ferndale School District,* 3 Terr. L. R. 440.

On "residence," see cases collected in *Allman* v. *Yukon Consolidated,* 6 W. L. R. 813.

Order given against the defendants (execution creditors), in interpleader by sheriff on plaintiff's application. *Gowan* v. *Kolcheu,* 12 W. L. R. 211.

When setting up a counterclaim arising out of same matter or transaction as the claim, the defendant is not required to give security; but where it is a distinct action he may be treated as plaintiff and required to give security. *Neck* v. *Taylor* (1893), 1 Q. B. 560, quoted. *Griffin* v. *Ruller,* 7 Terr. L. R. 119.

As to when a counterclaiming defendant resident *ex juris* will be ordered to give security, see cases quoted in *Griffin* v. *Ruller,* 4 W. L. R. 12.

A summons for security based on an affidavit stating a corporation resided *ex juris,* but omitting to state where head office was, dismissed with costs. *Commercial Bank* v. *Kirkham,* 6 Terr. L. R. 479.

Security for costs in interpleader action or claim barred may be ordered, but time may be extended. *Turner* v. *Tymchorak* (Man)., 8 W. L. R. 484.

When security is ordered to be given forthwith, it must be done with all reasonable celerity. *Morton* v. *Bank of Montreal,* 3 Terr. L. R. 466.

As to taxation of costs on an application for security for costs where both parties are partly successful, see *Griffin* v. *Ruller,* 4 W. L. R. 12.

RULE 717.—Where defendant has appeared notice must be given. *American Abell* v. *Snider,* 4 W. L. R. 542.

The rule includes solicitor and client costs. *Ex parte Day & Henwood,* 8 W. L. R. 536.

RULE 719.—Costs wrongfully occasioned were not allowed the successful party in *John Abel Co.* v. *Long,* 1 W. L. R. 24.

Where defendant, after pleading to a bad statement of claim, makes a successful motion to strike out the statement of claim and dismiss the action, he may be deprived of costs of pleading. *Gray* v. *Balkwill,* 5 W. L. R. 257.

As against his client a solicitor is entitled to costs for all work done unless his negligence is such that the client derives absolutely no benefit from the work. *Hamilton* v. *McNeil,* 3 Terr. L. R. 298.

RULE 732.—On a review of taxation it is not necessary to set forth in the notice the grounds of the application. *Smithers* v. *Hutchings,* 3 Terr. L. R. 251.

On a review no further evidence in support of the application will be received. *Martin* v. *Smith,* 1 Sask. L. R. 141.

RULE 737.—The following decisions have been given in matters in dispute during taxation:—

Affidavits.—Proving no defence served, not allowed. *Massey-Harris* v. *Hutchings,* 6 Terr. L. R. 10, 3 W. L. R. 252. Cost of preparing exhibits to affidavits shewing state of record, allowed. *Newstead* v. *Rowe,* 3 Sask. L. R. 205. Instructions for affidavit of replevin allowed. *Allison* v. *Christie,* 2 Terr. L. R. 279. Two separate affidavits allowed to plaintiffs not living together, *idem.* Costs of affidavit of service allowed where service is not made by sheriff, per Harvey, J., in *McNeil* v. *Eastman* (1904), unreported.

Attendance.—Fee for attendance and counsel fee on Chamber application allowed. *Tetley* v. *Western Elevator Co.,* Moosejaw (1905), unreported.

Briefs.—Instructions for brief and brief in interlocutory matters are in discretion of the clerk, *Gibson* v. *Drennan,* 1 W. L. R. 577, but not allowed in *ex parte* applications, per Wetmore, C.J. (1908). Brief and instructions in foreclosure proceedings allowed, though the defendant did not appear or oppose. *Calder* v. *Narovlansky,* 7 Terr. L. R. 5.

Counsel fees.—Are allowed to counsel appearing in person but not fees for advising or instructions. *Calvert* v. *Forbes,* 3 Terr. L. R. 282.

Foreign Commission.—See *Cramer* v. *Bell,* 6 W. L. R. 382.

Instructions.—For pleading in O. S. for foreclosure allowed. *Calder* v. *Narovlansky,* 7 Terr. L. R. 5. For examination for discovery allowed. *Newstead* v. *Rowe,* 3 Sask. L. R. 205. Instructions for brief on both defence and counterclaim taxable. *Welwyn Farmers Elevator Co.* v. *Byrne,* 3 W. L. R. 365.

Perusals.—Of defence and counterclaim are both taxable. *Welwyn Farmers Elevator Co.* v. *Byrne,* 3 Terr. L. R. 365. Perusal of O. S. allowed. *Calder* v. *Narovlansky,* 7 Terr. L. R. 5.

Service.—Of order *nisi* on a defendant who had not appeared disallowed. *Colonial Inv. & Loan Co.* v. *Smith,* 3 Sask. L. R. 482.

Severance.—Costs of severing discussed in *Union Investment* v. *Pullishy,* 8 W. L. R. 530. *Lougheed* v. *Parish,* 4 Terr. L. R. 54.

Sheriff's fees.—Sheriff's fees for removing executions from Land Titles Office are payable by execution creditors. *Re Brown,* 3 Sask. L. R. 94. Sheriff is entitled to mileage fees by shortest route to point where service is effected. *Wise* v. *Currie,* 3 Terr. L. R. 149. The only costs taxable in proceedings to confirm sale are such as are incidental to proving the regularity of the sale and of obtaining the order. Such order is a special application. *Massey* v. *Ewen,* 7 Terr. L. R. 133.

Subpoena.—A subpœna for each of several witnesses allowed where they resided in different parts of the country and the same subpœna could not be conveniently produced to them all (decided under the old rules). *Craig* v. *New Oxley Ranche Co.,* 2 Terr. L. R. 277.

Witnesses attending on more than one suit are entitled to full fees in each case. *Hamilton* v. *Beck,* 3 Terr. L. R. 405. A witness attending before the clerk on a reference allowed witness fees provided by scale on trial or scale provided by English rules. *Calvert* v. *Forbes,* 3 Terr. L. R. 336.

Witness from Ontario disallowed his fees on ground that there should have been a commission. *Fysh* v. *Black,* Moosejaw (1904), unreported; but held otherwise in *Hewitt* v. *Boulet,* 10 W. L. R. 21. The English practice that witness fees must be paid before being taxed is applicable; where after taxation it transpires that they have not been paid, the proper procedure is to make application to the Court. *Grindle* v. *Gillman,* 4 Terr. L. R. 180.

In an action for a $1,000 counsel fee agreed to be paid, it was held that the parties having contracted themselves outside the tariff, it was held not a case for taxation, but the fact that prepayment was not insisted on did not disentitle the plaintiff to recover. *Allan* v. *Dangerfield,* 18 W. L. R. 184.

RULE 747.—The copy served of an originating summons was not a true copy of the original, inasmuch as it had the province of Manitoba instead of Alberta in the clause embodying the order for service *ex juris,* but the defendant was not prejudiced thereby. Held that it was a case for relief under this rule. *Shore* v. *Hewson,* 7 W. L. R. 634.

Service of a notice of motion instead of a summons in chambers can be treated as an irregularity and waived by counsel appearing. *Annable* v. *Annable,* 8 W. L. R. 132.

RULE 749.—This rule does not apply to an application to set aside for defects greater than irregularities. *Mohr* v. *Parks* (Alb.), 15 W. L. R. 250.

RULE 751.—The permissive language must be used as imperative, per Wetmore, C.J., in *Beaver Lumber Co.* v. *Eckstein.* 8 W. L. R. 440.

RULE 752.—As to conflict between this rule and rules of the Criminal Code, see *Mack Sing* v. *Smith,* 9 W. L. R. 28.

RULE 768.—Applications for maintenance must be by a petition duly verified and supported by affidavits showing, *inter alia,* the circumstances of the parents, if any, and that they are unable to maintain the infant. *Re Green,* 9 W. L. R. 630.

RULE 776.—Any agreement by which a father relinquishes the custody of his child is illegal, and a child may be taken away at any time from adopted parents. *Re Gray,* 6 W. L. R. 374, affirmed 674. See also *Barrett* v. *Barrett,* 6 Terr. L. R. 274, and *Farrell* v. *Wilton,* 3 Terr. L. R. 232.

A father taking back a child from adopted parents is liable for maintenance, during such period of adoption, only by virtue of a contract expressed or implied. *Farrell* v. *Wilton, supra.*

As to the custody of an illegitimate child as between the mother and putative father, see a review of the cases by Mr. Justice Johnstone in *Re Bestwrick* v. *Auston,* 11 W. L. R. 73.

RULE 791.—A default judgment against an infant before a guardian is appointed will be set aside. *Westaway* v. *Hamer,* 1 Sask. 50.

RULE 792.—The Imperial Infants Relief Act of 1874 is not in force in the province. *Brand* v. *Griffin,* 9 W. L. R. 427.

Crown Practice Rules

Rules for Conveyance of Prisoners Under Sentence to Gaol

—and—

Rules and Orders under The Winding Up Act

CROWN PRACTICE RULES.

CUSTODY OF PAPERS.

Registrar to keep papers

1. The registrar of the supreme court *en banc* shall have the care and custody of the records and proceedings in respect to proceedings arising by way of *certiorari, quo warranto,* injunction in the nature of a *quo warranto, mandamus,* prohibition or *habeas corpus.* C. P. R. 1

CERTIORARI.

Security to be given

2. Subject to the provisions of this rule being dispensed with, as hereinafter provided, no motion to quash any conviction, order or other proceeding by, or before, a justice or justices of the peace, and brought before the supreme court of Saskatchewan, or any judge thereof, by *certiorari,* shall be entertained by such court or judge, unless the defendant is shown to have entered into recognisance in $200, with one or more sufficient sureties, before a justice of the peace and deposited the same with the registrar; or to have made a deposit with the said registrar of $100, in either case, with a condition to prosecute such motion and writ of *certiorari,* at his own costs and charges, with effect and without delay, and if ordered to do so, to pay to the person in whose favour the conviction, order or other proceeding is affirmed his full costs and charges, to be taxed, where such conviction, order, or proceeding is affirmed. C. P. R. 2.

Notice of motion

3. Every application for a writ of *certiorari,* at the instance of any other person than the attorney general on behalf of the Crown, shall be made to a judge by notice of motion or to the court *en banc* for an order *nisi,* to show cause why the writ should not issue. C. P. R. Am. 1.

On whom to be served

4. Such notice or order *nisi* shall be served upon the justice or one of the justices who made the conviction or order, and upon such other person or persons as the court or a judge shall, upon such application, direct. C. P. R. Am. 2.

May be quashed on return

5. Where, from any cause, the court or a judge is on such application of opinion that the validity of the conviction, or order, can be dealt with on the return of the notice of motion or order *nisi,* the notice or order *nisi* shall also be to show cause why the conviction or order should not be quashed, but in this case the private prosecutor shall be one of the persons

to be served, and the judge or court may, in such case, dispense with the giving of security required by rule 2. C. P. R. Am. 3.

Time

6. No application for a *certiorari* shall be made after the expiration of six months from the date of the conviction or order. C. P. R. 5.

Powers of court or judge

7. On an application for a *certiorari* to remove a judgment, conviction or order, the court or a judge may order such judgment, conviction or order to be quashed, without the actual issue of the writ of *certiorari;* and, if such person is in custody under any warrant or other process issued on such judgment, conviction or order, the court or judge may, in granting such order for a writ of *certiorari* or to quash such judgment, conviction or order, at any time after said order is granted, order him to be discharged from custody absolutely, or on his giving such security as the court or judge shall direct, that if the said judgment, conviction or order is confirmed, or the application for the writ of *certiorari* is dismissed, or the writ of *certiorari* is quashed, he will comply with the provisions of the judgment, conviction or order and pay the fine or penalty imposed, and in case of imprisonment without fine, that he will forthwith surrender himself into the same custody and undergo the remainder of his imprisonment, notwithstanding the term limited for his imprisonment shall have expired. If the recognisance shall be forfeited, a warrant for the apprehension of the defendant may be granted by a judge, which shall authorise his arrest and imprisonment for the unexpired term. N. S. 37.

QUO WARRANTO.

No quo warranto without leave

8. No information in the nature of a *quo warranto* except an *ex officio* information shall be granted without leave of the court or a judge, and unless at the time of application for such leave an affidavit be produced by which some person shall depose on oath that such application is made at his instance as relator; and such person shall be deemed to be the relator in case an order shall be made, and shall be named as such relator in the information, unless the court or judge shall otherwise order. N. S. 48.

Objections to be specified in notice

9. Every objection intended to be made to the title of a defendant on an information in the nature of a *quo warranto,* shall be specified in the notice of motion, and no objection not so specified shall be raised by the relator on the pleadings without the special leave of the court or a judge. N. S. 49.

Costs

10. The court or a judge may refuse the application for an information in the nature of a *quo warranto,* with or without

costs, and in its discretion may, upon such notice as may be just, direct the costs to be paid by the solicitor or other parties joining in the affidavits in support of the application, although he is not the proposed relator. N. S. 50.

New relator may be substituted

11. A new relator may, by leave of the court or a judge, be substituted for the one who first entered into the recognisance on special circumstances being shown. N. S. 51.

Informations may be consolidated

12. Where several applications for informations, in the nature of a *quo warranto,* have been made against several persons for the usurpation of the same office, and all upon the same or like grounds of objection, the court or a judge may order such applications to be consolidated, and only one information to be filed in respect of all of them, or may order proceedings to be stayed upon all but one, until judgment be given in that one:

Provided always that no order be made to consolidate or stay any proceedings against any defendant, unless he give an undertaking to disclaim, if judgment be given for the Crown upon the information which proceeds. N. S. 52.

Defendant may file disclaimer

13. If the defendant, in an information in the nature of a *quo warranto,* does not intend to defend he may, to prevent judgment by default, file a disclaimer in the office of the registrar, and deliver a copy to the relator or his solicitor. Upon the disclaimer being filed judgment of ouster may be entered, and the costs taxed as in judgment by default. N. S. 53.

MANDAMUS.

Notice of motion upon whom to be served

14. The notice of motion, in the case of an application for a prerogative writ of *mandamus,* shall be served upon every person who shall appear to be interested or likely to be affected by the proceedings. The court or a judge may direct notice to be given to any other person or persons, and adjourn the hearing for that purpose. N. S. 55.

Who may show cause

15. Any person, whether he has been so served or not, who can make it appear to the court or judge that he is affected by the proceeding for a writ of *mandamus,* may show cause against the application and shall be liable to costs in the discretion of the court or judge, if the order should be made or the prosecutor obtain judgment. N. S. 65.

Order need not be served

16. The order for a *mandamus* need not be served, but where served the cost of service of the order may be allowed in the discretion of the taxing officer, where the writ is not issued. N. S. 57.

Peremptory writ

17. The court or a judge may, if deemed proper, order that any writ of *mandamus* shall be peremptory in the first instance. N. S. 60.

Writ to bear date of issue

18. Every writ of *mandamus* shall bear date on the day when it is issued. The writ may be made returnable forthwith, or time may be allowed to return it, either with or without terms, as to the court or a judge shall think fit. N. S. 61.

Return

19. Any person, by law compellable to make return to a writ of *mandamus*, shall make his return to the first writ. N. S. 62.

Point of law

20. Where a point of law is raised in answer to a return, or any other pleading in *mandamus*, and there is no issue of fact to be decided, the court or a judge shall, on the argument of the point of law, give judgment for the successful party, without any motion for judgment being made or required. N. S. 63.

Applicant obtaining judgment entitled to peremptory writ

21. Where the applicant obtains judgment, he shall be entitled forthwith to a peremptory writ of *mandamus* to enforce the command contained in the original writ, and the judgment shall direct that a peremptory writ do issue. N. S. 64.

No action against person obtaining writ

22. No action or proceeding shall be commenced, or prosecuted, against any person in respect of anything done in obedience to a writ of *mandamus*, issued by the court or any judge thereof. N. S. 65.

If proceedings for benefit of another person

23. When it appears to the court or a judge that the respondent claims no right or interest in the subject matter of the application, or that his functions are merely ministerial, the return to the writ and all subsequent proceedings down to judgment shall still be made, and the proceedings be carried on in the name of the person to whom the writ is directed, and if the court or judge thinks fit so to order, may be expressed to be made on behalf of the person really interested therein. In that case the persons interested shall be permitted to frame the return, and conduct the subsequent proceedings at their own expense; and, if judgment is given for or against the applicant, it shall likewise be given against or for the persons on whose behalf the return is expressed to be made; and, if judgment is given for them, they shall have the same remedies for enforcing it as the person to whom the writ is directed would have in other cases. N. S. 66.

Where nominal party dies

24. Where, under the last preceding rule, the return to a writ of *mandamus* is expressed to be made on behalf of some

person other than the person to whom the writ is directed, the proceedings on the writ shall not abate by reason of the death, resignation or removal from office of that person, but they may be continued and carried on in his name; and if a peremptory writ is awarded, it shall be directed to the successor in office or right of that person. N. S. 67.

Affidavit required.

25. No order for the issuing of any writ of *mandamus* shall be granted, unless at the time of application an affidavit be produced, by which some person shall depose upon oath that such application is made at his instance as prosecutor, and if the writ be granted the name of such person shall be indorsed on the writ as the person at whose instance it is granted. N. S. 69.

PLEADINGS IN QUO WARRANTO.

Defendant may plead.

26. When any information in the nature of a *quo warranto* has been filed, the defendant may plead to such information within such time and in like manner as if the information were a statement of claim delivered in an action, and where the judgment is for the relator, judgment of ouster may be entered for him in all cases. N. S. 94.

Reply.

27. The prosecutor, in answer to a plea that the defendant has held and executed the office or franchise for six years before the exhibiting the information, may reply any forfeiture, surrender, or avoidance by the defendant within the said six years. N. S. 95.

PLEADINGS IN MANDAMUS.

Pleadings.

28. When any return is made to the first writ of *mandamus*, the applicant may plead to the return, within such time and in like manner as if the return were a statement of defence delivered in an action. C. P. R. 97.

PLEADINGS IN PROHIBITION.

Pleadings.

29. Where pleadings in prohibition are ordered, the pleadings and subsequent proceedings, including judgment and assessment of damages (if any) shall be, as nearly as may be, the same as in an ordinary action for damages. N. S. 97.

JUDGMENT BY DEFAULT.

Judgment by default may be signed.

30. In case no statement of defence or other pleading shall be entered within the time limited, the opposite party may file a note of such default, in the proper office, after the expiration of the time limited, upon filing an affidavit showing such default, unless an order of the court or a judge extending such time shall have been obtained and served, in which case such

person other than the person to whom the writ is directed, the proceedings on the writ shall not abate by reason of the death, resignation or removal from office of that person, but they may be continued and carried on in his name; and if a peremptory writ is awarded, it shall be directed to the successor in office or right of that person. N. S. 67.

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JUDGMENT BY DEFAULT.

Judgment by default may be entered

30. In case no statement of defence or other pleading shall be entered within the time limited, the opposite party may file a note of such default, in the proper office, after the expiration of the time limited, upon filing an affidavit showing such default, unless an order of the court or a judge extending such time shall have been obtained and served, in which case such

note shall not be filed until after the expiration of the time granted by such order, and after the filing of such note, the party in default shall not, without leave of the court or a judge, file any further pleading; but the party entering such note may make an application *ex parte* to the court or a judge for such judgment as he may deem himself entitled to. C. P. R. 29.

HABEAS CORPUS.

Attachment for contempt

31. If a writ of *habeas corpus* be disobeyed by the person to whom it is directed, application may be made to the court or a judge, on an affidavit of service and of such disobedience for an attachment for contempt. C. P. R. 30.

Return

32. The return of the writ of *habeas corpus* shall contain a copy of all the causes of the prisoner's detention indorsed on the writ, or on a separate schedule annexed to it. C. P. R. 31.

Return may be amended

33. The return may be amended, or another substituted for it, by leave of the court or a judge. C. P. R. 32.

Return to be made before motion to discharge

34. When a return to the writ of *habeas corpus* is made, the return shall first be made and motion then made for discharging or remanding the prisoner, or amending or quashing the return. C. P. R. 33.

Judge may order prisoner's discharge forthwith

35. On the argument of a motion for a writ of *habeas corpus*, the court or a judge may, in their or his discretion, direct an order to be drawn up for the prisoner's discharge, instead of waiting for the return of the writ, which order shall be a sufficient warrant for any gaoler or constable, or other person, for his discharge. C. P. R. 34.

GENERAL.

Application to court or a judge

36. Application for a prerogative writ of *mandamus,* for a writ of *certiorari,* or order to quash proceedings without the actual issue of the writ, for a writ of *habeas corpus,* for prohibition, or for an information in the nature of a *quo warranto,* may be made either to a judge in chambers or in court, or to the court *en banc,* the court or a judge may, if it be deemed proper, grant *ex parte* an order for the immediate issue of a writ of *habeas corpus.* C. P. R. 35.

Service of writ

37. Any writ may be served, according to the rules relating to the service of writs of summons, under the rules of the supreme court. C. P. R. 36.

Copy to be served

38. It shall not be necessary to serve the original of any writ, judgment, order or other proceeding, but the party served with a copy thereof shall be entitled to inspect the original at the time of service, if he so demand. C. P. R. 37.

39. All proceedings under these rules shall be intituled in the supreme court and shall be styled in the matter to which they relate, so as to show the name of the applicant as informant, relator, plaintiff, private prosecutor, or otherwise, according to the nature of the case and the name of the defendant, respondent or party against whom the application is made. C. P. R. 38. Title

40. In all proceedings under these rules the costs shall be in the discretion of the court or judge, who shall have full power to order either the applicant or the party against whom the application is made, or any other party to the proceedings, to pay such costs, or any party thereof, according to the result. C. P. R. 39. Costs

41. The proceedings for attachment for contempt, for disobedience of any writ, judgment, or order issued or made under these rules, shall conform as nearly as may be to proceedings for contempt, for disobedience of any writ, judgment or order in a civil action. C. P. R. 40. Contempt

42. When a cause or matter is at issue the plaintiff, informant, relator or private prosecutor, as the case may be, may on notice of motion apply to a judge in chambers to set the same down for hearing or trial, whereupon such judge may set it down accordingly at such time and place as he may deem advisable. To be set down

43. If the plaintiff, informant, relator or private prosecutor does not make such application within two months after the cause or matter is so at issue, the defendant or respondent may, on like notice, apply to a judge in chambers to set the cause or matter down for hearing or trial, or he may give notice of motion dismissing the cause or matter with costs. Upon such application the judge may, if the motion is to set the cause or matter down for hearing, set it down accordingly, or if the motion is to dismiss the cause or matter make such order and on such terms as he may deem just. Defendant may apply after two months

APPLICATION OF RULES OF SUPREME COURT.

44. The following rules and orders of the supreme court with respect to civil actions and proceedings in such court shall, as far as applicable, apply to all proceedings in relation to Crown matters, and wherever by any of such rules, it is provided that any act shall be done by, or proceeding held by, or before the local registrar, such act shall be done by, or proceeding held by, or before the registrar: Supreme court rules to apply

ORDER V.....	(Service of other proceedings)
RULE 73.....	(Constitutional questions)
ORDER XI except rules 147, 152 and 168.....	(Pleading generally)
ORDER XII except rule 172..	(Statement of claim)
ORDER XIII rules 176, 177, 178, 179 and 190.....	(Defence and counterclaim)
ORDER XIV.....	(Reply and close of pleadings)
ORDER XVI.....	(Matters arising pending the action)
ORDER XVII.....	(Raising points of law or)
ORDER XXI.....	(Amendment)
ORDER XXII.....	(Discovery of documents)
ORDER XXIII except rules 281 and 305.....	(Examination for discovery)
ORDER XXIV.....	(Admissions)
ORDER XXVI.....	(Special case)
ORDER XXVII except rule 355	(Trial)
ORDER XXVIII.....	(Evidence)
ORDER XXX.....	(Affidavits and depositions)
ORDER XXXII.....	(Judgments and entry of judgment)
ORDER XXXIII.....	(Execution)
ORDER XXXIV.....	(Discovery in aid of execution)
ORDER XL.....	(Interpleader)
ORDER XLII.....	(Motions and applications)
ORDER XLIII.....	(Applications in chambers generally)
ORDER XLIV.....	(Court *en banc*)
ORDER XLV except rule 691	(Sittings and vacation)
ORDER XLVI.....	(Time)
ORDER XLVII except rules 721, 724, 725, 726 and 727	(III.—*Taxation and Tariff of Costs*)
ORDER XLVIII.....	(Service of orders, etc.)
ORDER XLIX.....	(Noncompliance and irregularities)

C. P. R. 41.

Registrar's fees

45. The fees, taxable to the registrar for services on the crown practice side of the court, shall be the fees taxable to the local registrar under the tariff for similar services, except when the service is performed in connection with the court *en banc*, when the fees taxable shall be those taxable to the registrar.

46. Where no other provision is made by these rules, the procedure and practice shall, as far as may be, be regulated by the crown office rules for the time being in force in England. Where no other provisions English practice adopted

FORMS.

47. The forms for the time being in use in England under the said crown office rules where applicable, and where not applicable, forms of the like character, as near as may be, shall be used in all proceedings except where otherwise ordered by these rules. C. P. R. 42. Forms

48. These rules may be cited as "The crown practice rules." Short title

RULES FOR CASES STATED UNDER SECTION 761 OF "THE CRIMINAL CODE."

Application to be in writing

1. An application to a justice of the peace to state and sign a case, under said section 761, shall be in writing, and be delivered to such justice or left with some person for him at his place of abode, within seven clear days from the date of the proceeding questioned.

Justice shall state case

2. Within one calendar month after such application has been so delivered or left for him, the justice shall state and sign and deliver to the appellant a case setting forth:

What to contain

(*a*) The substance of the information or complaint;

(*b*) The names of the prosecutor (or complainant) and defendant;

(*c*) The date of the proceeding questioned;

(*d*) The facts of the case;

(*e*) The conviction, order, determination or other proceeding questioned;

(*f*) The grounds on which the same is questioned, which must be confined to the grounds raised at the trial;

(*g*) The grounds upon which the justice supports the proceeding questioned, if the justice sees fit to state any.

Not to be delivered until recognisance entered into

3. The justice shall not deliver said case until after the appellant shall have entered into a recognisance, and paid the fees as provided by section 762 of the Code.

If justice refuses to state case applicant may apply to court

4. In the event of the justice declining, refusing or omitting to state a case, the appellant may apply to the court *en banc* for a rule as provided by section 764 of the Code.

(*a*) Or the appellant may in such event apply to a judge sitting in chambers, upon affidavit of the facts, for a summons calling upon the justice and the respondent to show cause why such case should not be stated; and the judge in chambers may, on the return thereof, make such order, with or without payment of costs, as to him seems meet; and the justice being served with such order shall, if ordered to do so, state a case upon the appellant entering into such recognisance and paying the fees to the justice, as provided in said section 762.

5. Within ten days after the receipt by the appellant of a case stated by a justice, he shall file or cause it to be filed with the registrar of the supreme court *en banc.* Case to be filed

6. Upon sufficient cause for the delay being shown, the court or judge, as the case may be, may hear and determine the matter, although the case was not filed within said ten days. Delay

7. The appellant shall state, in the notice of appeal given to the other party, to the proceeding as required by subsection 2 of section 761 of the Code, as amended by chapter 9 of 8 and 9 Edward VII (1909), whether the appeal is to the court *en banc* or to a judge in chambers, and if to the court *en banc* the date of the sittings of such court at which it will be heard. Notice of appeal

8. When the case stated has been delivered to the registrar for hearing by the court *en banc,* the same shall be heard at the next sittings of such court, which shall sit no sooner than fourteen days after the delivery of the case stated to the registrar, and the appellant shall give to the respondent ten days' notice in writing of the time and place of hearing the appeal. Case to be heard at next sittings

9. When the case has been delivered to the registrar for hearing by a judge in chambers, the appellant shall, within five days after such delivery, apply to the judge in chambers to fix a time and place for the hearing of the appeal, and the judge shall thereupon appoint a time and place for such hearing, and a copy of such appointment shall be served upon the opposite party, or as the judge may direct: Hearing by judge in chambers

Provided that if such application be not made within said period of five days, the judge may, upon sufficient cause for the delay being shown, fix such time and place, notwithstanding that said period may have elapsed.

10. If the court or a judge order the case to be sent back for amendment, the same shall be forthwith amended by the justice, in accordance with any directions given by the court or judge, and transmitted when amended to the registrar. Amendment

11. An order of a judge, by whom a case stated has been heard, shall have the same effect as an order made by the court under section 765 of the Code, and the provisions of section 767 of the Code shall apply, where the decision is that of a judge, in the same way as in case of a decision by the court, and any order of the judge may be enforced by process issued out of the court. Effect of judge's order

Rules for proceedings before judge

12. In so far as these rules do not expressly make provision, whenever a case stated is brought before a judge as hereinbefore provided, the provisions of sections 761 to 767, both inclusive, and of any amendments and additions thereto as to such a case when before the court shall, *mutatis mutandis,* be applicable to the proceedings on a case before the judge.

Recognisance to be sent to registrar

13. A justice before, or immediately after, delivering a case stated to the appellant shall transmit the recognisance to the registrar.

Slight deviations

14. Slight deviation from strict compliance with these rules shall not invalidate any proceeding or thing, if the court or judge sees fit to allow the same, either with or without, requiring the same to be corrected.

RULES FOR CONVEYANCE OF PRISONERS UNDER SENTENCE TO GAOLS

RULES FOR CONVEYANCE OF PRISONERS UNDER SENTENCE TO GAOLS.

Prisoner may be conveyed to gaol without warrant

1. Whenever a person is sentenced to imprisonment in a common gaol in the Province of Saskatchewan, by any court in such province, the sheriff or deputy sheriff of any judicial district in such province or any bailiff, constable or other officer, or other officer or other person by his direction, or by the direction of the court may, if no form of warrant is provided by *The Criminal Code* therefor, convey to the gaol named in the sentence any convict sentenced to be imprisoned therein and shall deliver him to the keeper thereof, without any further warrant than a copy of the sentence taken from the minutes of the court before which the convict was tried, and certified by a judge or the local registrar or clerk or acting local registrar or clerk of such court.

Application

2. The aforegoing shall also apply where, according to the sentence imposed upon the convict, he is made liable to the punishment of death or whipping, or any other punishment.

Duty of gaoler

3. The keeper of the common gaol mentioned in such certified copy of sentence is authorised, and hereby required, to receive the convict mentioned in such certified copy of sentence into his custody in the said gaol, and he and the sheriff of the judicial district in which such gaol is situated, and all other persons and authorities whose duty it is to do so, are hereby authorised and required to carry out and execute the sentence mentioned in such certified copy of sentence, according to its tenor and effect.

RULES AND ORDERS UNDER THE WINDING UP ACT.

(Revised Statutes of Canada, 1906, chapter 144.)

Interpretation

1. The word "registrar" used in these rules shall mean the registrar of the supreme court of Saskatchewan.

PETITION TO WIND UP COMPANY.

Heading

2. Every petition for the winding up of any company by the court, and all notices, affidavits and other proceedings under such petition, shall be intituled, "In the Matter of the Winding Up Act," and of the company (naming the company) to which such petition relates.

Service

3. Except in cases when the application is made by the company, a copy of the petition, accompanied by the notice of application, shall be served at the principal or last known principal office or place of business of the company, if any such can be found, upon any member, officer or servant of the company there; or, in case no such member, officer or servant can, after due diligence, be found there, then in the manner provided for service on a corporation of ordinary process, or in such other manner as the court or a judge shall direct.

Material

4. The notice of the application shall mention the affidavits and other material upon which the applicant intends to rely in support of the application, and copies of such affidavits and other material, or of any portion thereof, shall be furnished by the solicitor of the petitioner, or by the petitioner if he shall present the same in person, to the solicitor or any officer of the company requiring the same, within twenty-four hours after the demand therefor.

Contributories and creditors to receive material

5. Every contributory or creditor of the company shall be entitled to be furnished by the solicitor for the petitioner, or by the petitioner if he shall present the petition in person, with copies of the petition, affidavits, and material aforesaid, or of any portion thereof required, within twenty-four hours after the same shall have been by him demanded, on paying at the rate of ten cents per folio of one hundred words for each such copy.

Indorsement of petition

6. Upon every such petition, and upon every copy thereof served, there shall, if such petition be furnished by a solicitor,

be indorsed the name or firm and place of business of the solicitor or solicitors by whom such petition is being presented; and when such solicitor or solicitors is or are agents for another or other solicitor or solicitors, then there shall be further indorsed, on such petition and copies, the name or firm and place of business of the principal solicitor or solicitors.

Same if presented in person

7. Every party presenting such petition in person shall cause to be indorsed, or written upon, every such petition and copy his name and address; and also, when his place of residence is not in the place where the registrar's office is kept, another address in the place where such office is kept to be called his address for service, at which address notices, orders, summonses, warrants and other documents, proceedings and written communications may be left for him.

Material to be filed

8. Every such petition, and the affidavits and other material intended to be used in support thereof, shall, on or before the day of service of notice of the application for a winding up order, be filed in the office of the registrar, and unless so filed such petition, affidavits or material shall not be read or used upon the application without special leave of the court or a judge.

Application to be made in chambers

9. Such petition shall be presented to the presiding judge in chambers, and the application may then be heard and determined by him, or adjourned to another day or time to be heard in chambers or before the court, as he or any other judge, before whom the same shall come in chambers, shall direct.

LIQUIDATORS.

Provisional liquidator

10. If the petitioner shall desire to have a liquidator appointed upon the first presentation of the petition without any adjournment, or to have a provisional liquidator then appointed, he shall in the notice of his application mention the name of the liquidator or provisional liquidator sought to be appointed, and he shall also in such case, as soon as possible after the filing of his petition, apply to a judge for directions as to the mode of service of notice of the application for the appointment of a liquidator or provisional liquidator, and the parties to be served with such notice.

Judge may appoint liquidator forthwith

11. If it shall appear to the judge in chambers, upon the first presentation of the petition, that all proper parties have had sufficient notice, the judge may then make the order for winding up the company with the appointment of a liquidator; if not, the application shall be then adjourned for such time as the judge shall think proper, and notice of the name of

the party sought to be appointed liquidator, and of the time to which the application is adjourned, shall be given to such parties, and in such manner as to the judge shall seem proper.

Evidence required

12. To enable the judge to determine what shall be the most satisfactory method of giving notice of the application to appoint a liquidator, and the parties to whom such notice should be given, the petitioner shall, on applying to a judge for directions respecting such service, furnish to such judge the best evidence obtainable by him, on reasonable inquiry, to the satisfaction of the judge, as to the numbers of the creditors, contributories and shareholders respectively, and their places of residence, and the judge may require such further evidence on these, or other points to be furnished, as he shall think important for the purpose.

Notice, what to contain

13. The notice of the application for the appointment of a liquidator shall show, that the application is to be for the appointment of a person (giving his name, address, and occupation) therein named, or such other person as the court or judge shall think fit to appoint, and upon the application the court or judge may appoint the person named in the notice, or any other person with or without further notice to any person, as may seem proper.

Evidence of qualifications of proposed liquidator

14. The application for the appointment of a liquidator shall be accompanied by satisfactory evidence of the qualifications and character of the party sought to be appointed, and of his fitness for the office.

Provisional liquidator may be appointed any time

15. A provisional liquidator may be appointed at any time after the filing of the petition, and before the first appointment of a liquidator, and either before or after the application for winding up the company shall have first been made in chambers. Such appointment may be made with or without notice, as to the judge from whom the appointment is asked shall seem proper, and such provisional liquidator shall not be required to give security, unless specially ordered upon or after his appointment.

Liquidator to satisfy court as to his sureties

16. The liquidator shall, on each occasion of passing his account, and also whenever the court or a judge shall so require, satisfy the court or judge that his sureties are persons living and resident in the province, and have not become insolvent; and, in default thereof, he may be required to furnish fresh security within such time as shall be directed.

Guarantee company

17. If the surety is a guarantee company, or other company authorised to act as surety, the court or a judge may, at

any time, require the liquidator to satisfy such court or judge that such company has not become insolvent, and is satisfactory as such security, and, in default thereof, the liquidator may be required to furnish fresh security within such time as may be directed.

Death, removal or resignation of liquidator

18. In case of the death, removal, or resignation of a liquidator, another or others shall be appointed in his stead as in the case of a first appointment, and the proceedings for the purpose may be taken by such party interested, as may be authorised by the court or a judge to take the same.

Liquidator to keep books

19. The liquidator shall, with all convenient speed after he is appointed, proceed to make up, continue, complete and rectify the books of account of the company, and shall provide and keep such books of account as shall be necessary, or as the court or a judge may direct for the purpose aforesaid and, for showing the debts and credits of the company, including a ledger, which shall contain the separate accounts of the contributories, and in which every contributory shall be debited from time to time, with the amount payable by him in respect of any call to be made under said Act.

Liquidator to file accounts

20. The accounts of the liquidator shall be filed in the office of the registrar at such time as may, from time to time, be required by the court or a judge, and such accounts shall, whenever required by the court or a judge, and upon notice to such parties (if any) as the court or a judge shall direct, be passed and verified in the same manner as receivers' accounts.

PROCEEDINGS UNDER WINDING UP ORDER.

Appointment to wind up

21. Within ten days after the issue of the winding up order, or such further time as the court or a judge shall direct, an appointment shall be obtained from a judge to proceed with the winding up of the company, and notice thereof shall be served upon all persons who may have appeared upon the hearing of the petition, and upon such other persons (if any) as the judge shall direct; in default of the petitioner so proceeding to obtain such appointment, the court or a judge may, if it shall seem proper, give the carriage and prosecution of the winding up to any other person interested.

Judge to give directions

22. At the time thus appointed, a time or times shall, if the judge think fit, be fixed for the proof of debts, for the list of contributories to be brought in, for the liquidator to file his accounts, and directions may be given as to the advertisements to be issued for all or any of such purposes, and generally as to the proceedings and the parties to attend thereon. The proceedings under the order shall be continued

by adjournment, and, when necessary, by further appointment, and any such direction as aforesaid may be given, added to or varied, at any subsequent time, as may be found necessary.

PROOF OF DEBTS.

Advertisement for creditors

23. For the purpose of ascertaining the debts and claims due from the company, and of requiring the creditors to come in and prove their debts or claims, an advertisement shall be issued at such time as the judge shall direct. Such advertisements shall fix a time for the creditors to send in their names and addresses, and the particulars of their debts or claims, the nature and amount of the security (if any) held by them respectively, with the valuation thereof on oath, required by the seventy-sixth section of the said Act, and the names and addresses of their solicitors (if any) to the liquidator, and appoint a day for adjudicating thereon.

Proof of claims not required unless notice

24. The creditors need not attend the adjudication, or prove their debts or claims, unless they are required to do so by notice from the liquidator or from any creditor, contributory, shareholder, or member of the company; but, upon such notice being given, they are to come in and prove their debts or claims at the time therein specified, or such other time as the court or judge may allow.

Liquidator to investigate claims

25. The liquidator shall investigate the debts and claims sent in to him, and ascertain, so far as he is able, which of such debts and claims are justly due from the company; and he shall make out and leave with the registrar a list of all the debts and claims sent to him, distinguishing which of the debts and claims or parts of debts and claims so claimed are, in his opinion, justly due and proper to be allowed without further evidence, and which of them in his opinion ought to be proved by the creditors; and he shall make and file with the said registrar, prior to the time appointed for adjudication, an affidavit setting forth which of the debts and claims in his opinion are justly due and proper to be allowed without further evidence, and stating his belief that such debts and claims are justly due and proper to be allowed, and the reasons for such belief.

Judge may require proof of claims

26. At the time appointed for adjudicating upon the debts or claims, or at any adjournment thereof, the judge may either allow the debts and claims upon the affidavit of the liquidator, or may require the same, or any of them, to be proved by the claimants, and adjourn the adjudication thereon to a time to be then fixed.

27. The liquidator shall give notice to the creditors, whose debts or claims have not been allowed upon the affidavit, that they are required to come in and prove the same by a day to be therein named, being not less than four days after such notice, and to attend at a time to be therein named, being the time appointed by the advertisement or by adjournment, or other appointment, as the case may be, for adjudicating upon such debts or claims. Notice to creditor to prove claim

28. The value of such debts and claims as are made admissible to proof shall, so far as is possible, be estimated according to the value thereof, at the commencement of the proceedings for winding up the company. Value of claims to be estimated

29. Such creditors as come in, and prove their debts or claims pursuant to notice, may be allowed their costs of proof, and in any case a creditor seeking to prove a claim may be ordered to pay costs. Costs of proving claims

30. The liquidator shall deposit with the registrar the papers to be transmitted to the court under the eighty-seventh section of said Act. Notice of the time and place fixed for hearing and determining the contestation shall be served upon the opposite party, and such other parties as the judge shall direct, at least four days before the day so fixed. Liquidator to deposit papers

31. If, by examination of the books, accounts or papers of the company, or by any other means, the liquidator is led to believe that any person is a creditor of, or has a claim against, the company, for which such party is entitled to rank upon the assets of the company, and such party shall not have sent in to the liquidator notice of his claim, the liquidator shall mention such claim and the probable amount thereof, according to the best information he shall have been able to obtain, in the affidavit required by rule 25, with the address, or supposed address, of such person, if the liquidator shall be able to give the same. Claims not sent in to be mentioned by liquidator

32. On the making of any dividend, except one declared as a final dividend, unless the court or a judge shall otherwise order, there shall be reserved for each person shown in such affidavit to be supposed to be a creditor of, or to have a claim against, the company as aforesaid, and not to have sent to the liquidator notice of his claim, an amount proportionate to his said claim, and a copy of the dividend sheet, showing the amount so reserved, shall be mailed to such person, as well as to the creditors whose claims shall have been duly allowed. Any amounts retained may, by leave of the court or a judge, upon the declaration of a subsequent dividend, be included in Amount may be reserved to pay claims not sent in

the sum divided among those whose claims shall have been duly allowed, without any further reservation for any person not having given such notice.

After declaration of dividend parties claiming must prove claim

33. Any person giving notice, after the declaration of a dividend, of a claim to rank as one of the creditors of, or as having a claim against, the company, shall be compelled to make proof of his claim before the court or a judge. Such proof shall, unless otherwise ordered, be made at the expense of the party making such claim. Any such party for whom a sum has been so reserved as aforesaid, and whose claim shall have been allowed, shall be collocated upon the next dividend sheet, after the allowance of his claim for the proper amounts of previous dividends so reserved, proportionately to the amount at which his claim shall have been allowed.

LIST OF CONTRIBUTORIES.

List of contributories

34. The liquidator shall, with all convenient speed after his appointment, or at such time as the court or a judge shall direct, make out, and leave with the registrar, a list of the contributories of the company. Such list shall be verified by the affidavit of the liquidator, and shall, so far as is practicable, state the respective addresses of, and the number of shares or extent of interest to be attributed to, each such contributory, and distinguish the several classes of contributories, and such list may, from time to time, by leave of the court or a judge, be varied or added to by the liquidator.

List to be settled

35. Upon such list of contributories being so left, the liquidator shall obtain an appointment to settle the same, and shall give notice in writing of such appointment to every person included in such list, and stating in what character, and for what number of shares or interest, such person is included in the list; and, in case any variation or addition to such list, shall at any time be made by the liquidator, a similar notice in writing shall be given to every person to whom such variation or addition applies.

All such notices shall be served four days before the date appointed to settle such list, or such variation or addition.

CALLS.

Call to be on notice

36. Every application to the court or a judge to make any call on the contributories, or any of them, shall be made upon notice, stating the proposed amount of such call; such notice shall be served four days at least before the day appointed for making the call, on every contributory proposed to be included in such call; and, upon the copy so served on each contributory

shall be written or printed a memorandum specifying the amount which such contributory will be required to pay, upon the basis of the call proposed.

Order may direct payment of all amounts due

37. An order for a call may be made so as to direct payment, not merely of the amount of the call, but also of the amounts or balances payable by the respective contributories, or by such of them as may seem proper, and the time and place of payment:

Provided that no contributory shall be thus ordered to pay a larger sum than specified in the memorandum, upon the notice, without notice to him or his solicitor that a larger sum is to be paid by him; but the court or judge may, upon such notice as may seem just, or, if the party appear, then without further notice, cause the memorandum to be amended so as to increase the amount or otherwise, and may direct the liquidator or other party having the conduct of the matter, to pay any additional costs to be thus incurred, and may make such other terms or conditions as may seem proper.

Notice of call by advertisement

38. If the court or a judge shall so direct, notice of the intended call may be given by advertisement, and no further notice of the application need then be given to any contributory, unless the court or a judge shall so order.

Advertisements need not contain amounts

39. Where notice of the intended call is given by advertisement, no notice need be given of the particular amount to be required of each contributory and the memorandum specified in rule 35 may be dispensed with.

Order not to contain specific amounts

40. Unless for special reasons it shall seem just and proper, where the memorandum specified in rule 36 is not served, either by advertisement or otherwise, the order shall specify merely the amount of the call to be made, and shall not direct payment of specific sums by the respective contributories.

Order to be served on contributories

41. A copy of an order for a call shall be forthwith served upon each of the contributories included in such call; and upon each contributory so included, not directed by the order itself to pay a specific sum in respect of such call, there shall be served, with the order, a notice from the liquidator, or other party having the conduct of the proceedings for a call, specifying the amount or balance due from such contributory (having regard to the provisions of the said Act and any amendments thereof), in respect of such call; but an order for a call need not be advertised, unless for any special reason the court or a judge shall so direct.

Order for contributories to pay

42. At the time of the making of an order for a call, if the order shall not specify the particular sum payable by each

contributory included in the call, or if the court or a judge shall otherwise deem it proper, the further proceedings relating thereto shall be adjourned to a time subsequent to the day appointed for the payment thereof, and afterwards from time to time so long as may be necessary. At the time appointed by any such adjournment, or upon a summons to enforce payment of the call, duly served, and upon proof of the service of the order and notice of the amount due, required by rule 41 and nonpayment thereof, an order may be made for such of the contributories who have made default, or for such of them against whom it shall be thought proper to make such order, to pay the sum which, by such former order and notice, they were respectively required to pay, or any less sum which may appear to be due from them respectively; and any order may be made that shall seem just and proper for payment by such contributories, or any of them, of the costs of such adjournment or further application and order or any portion thereof.

Liquidator may be ordered to pay additional costs

43. In any case in which the liquidator or other party, having the conduct of an application for or in respect of a call at any stage, shall have adopted a more expensive method of enforcing such calls than he might under these rules have adopted, in any respect, such liquidator or other party may be ordered to pay the additional costs so incurred, if the same shall not be ordered to be paid by, or if so ordered shall not have been realised from, any contributory or party.

Receipt for money paid by contributory

44. Any contributory may deposit with the registrar a receipt or acknowledgment of the bank, into which moneys payable into court are deposited, for money paid by him in respect of a call, or of the party authorised by the order to receive such payment, which receipt or acknowledgment shall show the amount so paid in respect of such call.

Execution may issue in certain cases

45. Where a contributory is, by the order for a call or by a subsequent order, directed to pay a specific amount in respect of a call, then, at the expiration of the time for payment, if no such receipt shall have been so deposited with the registrar, or if the receipt or acknowledgment deposited shall not show the proper amount to have been paid, executions may, without further order, be issued by the registrar for realising the amount so ordered, or the deficiency (if any) appearing by such receipt or acknowledgment, and with this may be included any sum for taxed costs, where the same can be conveniently included according to the usual practice.

PROCEEDINGS BEFORE A JUDGE.

Applications to be heard in chambers

46. Any application to a judge for any purpose under the winding up order shall be made to him in chambers, unless

the court or a judge shall, in the particular matter, otherwise direct. All such applications in chambers shall, unless the case be a proper one for an *ex parte* order, be made upon notice or appointment, to be signed by the chamber clerk; but the court or a judge may require any application to be made upon petition. An order shall be drawn up in every case unless otherwise directed.

Application to approve of compromise to be supported by affidavit

47. Every application for the sanction of the court or a judge to a compromise, or other arrangement with any contributory or other person indebted or liable to the company, or with creditors or persons claiming to be creditors of the company, shall be supported by the affidavit of the liquidator, that he believes that the proposed compromise will be beneficial to the company and the reasons for such belief, and showing (where the state of the affairs of such contributory or other person is one of such reasons), that the liquidator has investigated the affairs of such contributory or other persons, and the result of such investigation. The facts supporting such reasons for the liquidator's belief shall, as far as conveniently practicable, be proved, and upon the application such further evidence may be required as may, to the court or judge, appear proper.

Sanction of court or judge to be indorsed

48. The sanction of the court under the last preceding rule shall be testified by a memorandum, signed by the registrar on the agreement of compromise or arrangement, and the sanction of a judge by a memorandum signed by the chamber clerk on such agreement or arrangement.

ORDERS.

Orders

49. All orders made in chambers shall be signed by the chamber clerk, as orders made in chambers in actions at law, and all orders, before being given out, shall be entered at length in a book to be kept for that purpose by the registrar, unless in cases of urgency the court or a judge shall otherwise direct; in which case the order shall, as soon as possible, be left with the registrar to be entered, or a duplicate order shall be issued, as may be directed.

ADVERTISEMENTS.

Advertisements

50. Where an advertisement is required for any purpose, the same is to be published only in such newspaper or other publication, and for such number of times, as may be specially provided by order of the court or a judge.

ADMISSION OF DOCUMENTS.

Notice to admit

51. Any party to any proceeding in court or in chambers, under said Act, may, by notice in writing in the form required in suits at law, or to the like effect, with such alterations as circumstances may require, call on any other party thereto competent to admit the same, to admit any document, saving all just exceptions, or to admit that a copy of a document duly registered or filed in any land titles office, or filed under any Act respecting mortgages and sales of personal property, or respecting lien or receipt notes or orders for chattels, duly certified by the registrar or officer in charge of the office where the same is registered or filed, or his deputy, to be a true copy of the original document so registered or filed, is a true copy of such original document, and sufficient evidence of the due execution of the original, and that the same was registered or filed in the office stated in such certificate at the time therein stated. In case of any refusal or neglect so to admit, the costs of proving such document, or the registration or filing of the same, shall be paid by the party so neglecting or refusing, unless a judge shall be of opinion that the refusal to admit was reasonable; and no costs of proving any document, or the registration or filing thereof, where any portion of this rule is applicable, shall be allowed, unless such notice shall have been given, except in cases where the omission to give such notice has been in the opinion of the taxing officer (subject to appeal), a saving of expense.

FILE OF PROCEEDINGS.

Documents to be filed with registrar

52. All documents or proceedings required to be deposited or filed in court, shall be deposited or filed with the registrar.

Other documents to be filed with liquidator

53. All orders, exhibits, admissions, memorandums and all other documents relating to the winding up of any company, not required by these orders or the usual practice, or the special direction of the court or a judge, to be filed in court, shall be filed and kept by the liquidator in his own office, and shall be produced in court or before a judge, and otherwise, as may be required. Upon the termination of the winding up proceedings, all such documents, and all minute and account books referring to the company's affairs, shall be deposited with the registrar, unless or until it shall be otherwise ordered by the court or a judge.

Contributories and creditors may inspect documents

54. Every contributory of the company, and every creditor thereof, whose debt or claim has been allowed, shall be entitled at all reasonable times to inspect such documents as are deposited with the liquidator, in reference to proceedings under said Act, free of charge, and to take copies thereof, or extracts therefrom at his own expense, not removing the

same from the office where the same are deposited, or to be furnished with any such copies or extracts, on paying therefor, at a rate not exceeding five cents per folio of one hundred words, and such contributory shall be in like manner entitled to inspect all documents filed with the registrar, and to obtain copies thereof on payment of the usual fee for such inspection or copy.

PROVISIONAL LIQUIDATOR.

Rules to apply to provisional liquidators

55. All rules relating to liquidators shall, so far as the same are applicable, and subject to the directions of the court or a judge in each case, apply to provisional liquidators.

ATTENDANCE AND APPEARANCE OF PARTIES.

Contributories and creditors may attend proceedings

56. Every person for the time being on the list of contributories left by the liquidator with the registrar, and every person having a debt or claim against the company, allowed by the judge, shall be at liberty, at his own expense, to attend the proceedings in reference to the winding up of the company, and shall be entitled, upon payment of the costs occasioned thereby, to have notice of all such proceedings as he shall, by written request, desire to have notice of; but if the court or judge, before whom any proceeding is taken, shall be of opinion that the attendance of any such person upon any such proceeding has occasioned any additional costs, which ought not to be borne by the funds of the company, such person may be directed to pay such costs or a gross sum in lieu thereof; and such person shall not be entitled to attend any further proceedings until he shall have paid the same, and the liquidator shall have the right to take for collection of the same any proceedings, which might be taken for the collection of any costs awarded by any order of the court or a judge.

Representatives of creditors or contributories may be appointed

57. The court or a judge may, from time to time, appoint any one or more of the contributories or creditors, as he thinks fit, to represent before him, at the expense of the company or otherwise, as shall seem proper, all or any class of the contributories or creditors, upon any question as to a compromise with any of the contributories or creditors, or persons so appointed. In case more than one person shall be so appointed, they shall unite in employing the same solicitor to represent them.

Contributory or creditor to file address

58. No contributory or creditor shall be entitled to attend any proceedings at the chambers of the judge, unless and until he has entered in a book, to be kept for that purpose by the chamber clerk, his name and address, and the name and

address of his solicitor (if any), and upon any change of his address, or of his solicitor, his new address, and the name and address of his new solicitor.

SERVICE OF SUMMONS, NOTICES, ETC.

Service of papers

59. Services upon contributories or creditors shall be effected, except when personal or other service is specifically required, by sending the notice, or a copy of the summons or order or other proceeding, through the post, in a prepaid registered letter, addressed to the solicitor of the party to be served (if any), or otherwise to the party himself at the address entered or last entered pursuant to the last preceding rule; or, if no such entry has been made, then if a contributory, to his last known address or place of abode, and if a creditor to the address given by the petitioner pursuant to rule 12, and such notice, or copy of summons, order or other proceeding, shall be considered as served, at the time the same ought to be delivered in the due course of delivery by the post office, and notwithstanding the same may be returned by the post office; the judge shall not be obliged to receive proof on oath of such time, but may act on his own knowledge of the course of the mails, or such information as he may think reliable.

Mistake in names not to affect proceedings

60. No service under these rules shall be deemed invalid by reason that the christian name, or any of the christian names, of the person upon whom service is sought to be made, has been omitted or designated by initial letters, in the list of contributories or creditors, or in the summons, order, notice or other document wherein the name of such contributory or creditor is contained, provided the court or a judge is satisfied that such service is in other respects sufficient.

FORMS.

Forms

61. Until other forms are provided, the forms in use in winding up proceedings in England, with such variations as may be necessary to adapt them to the practice under these orders and the said Act, and as the circumstances of each case may require, may be used.

COSTS.

Costs

62. The fees allowed to solicitors, counsel and sheriffs in proceedings under said Act shall so far as applicable, and unless otherwise directed by the court or a judge, be those authorised under the tariff relating to the fees in the supreme court, and the fees allowed to the registrar in such proceedings shall, so far as applicable, be those authorised under the tariff to be paid to the local registrars.

Taxation of costs

63. Where an order is made in court or in chambers for payment of any costs, the same shall, unless otherwise directed, be taxed by the registrar, subject to appeal from such taxation as in ordinary proceedings in the supreme court.

COMPUTATION OF TIME.

Time

64. In the computation of time, under these rules, or under any notice, summons or order, made or given under the provisions hereof, unless otherwise specially mentioned, shall be reckoned exclusively of the first day and inclusively of the last day.

GENERAL DIRECTIONS.

Practice to govern

65. The general practice of the supreme court, including the proceeding and practice in judge's chambers, shall in cases not provided for by said Act and amendments thereto, or these rules, and so far as the same are applicable and not inconsistent with the said Act or these rules, apply to all proceedings for the winding up of a company.

63. Where an order is made in court or in chambers for payment of any costs, the same shall, unless otherwise directed, be taxed by the registrar, subject to appeal from such taxation as in ordinary proceedings in the supreme court. Taxation of costs

COMPUTATION OF TIME.

64. In the computation of time, under these rules, or under any notice, summons or order, made or given under the provisions hereof, unless otherwise specially mentioned, shall be reckoned exclusively of the first day and inclusively of the last day. Time

GENERAL DIRECTIONS.

65. The general practice of the supreme court, including the proceeding and practice in judge's chambers, shall in cases not provided for by said Act and amendments thereto, or these rules, and so far as the same are applicable, and not inconsistent with the said Act or these rules, apply to all proceedings for the winding up of a company. Practice to apply

CROWN PRACTICE RULES.

RULE 3.—A deposit in cash without any writing is sufficient. *R.* v. *Davidson,* 4 Terr. L. R. 425. But *quære,* if $100 deposited "to prosecute such motion *or* writ of certiorari" is good. *R.* v. *Earley,* 3 W. L. R. 567.

Sureties need only justify as to their possession of property over debts and exemptions and need not state over amount of other bonds for which they are liable. *R.* v. *Ashcroft,* 1 Terr. L. R. 119.

If the bond is filed without an affidavit of justification the rule has not been complied with. Where, however, a cash deposit was subsequently made a day or two before the return the applicant was allowed to take a new rule. *R.* v. *Petrie,* 1 Terr. L. R. 191.

RULE 3.—A single Judge has no jurisdiction to hear a motion to quash a conviction upon a writ of certiorari; such writs should be issued from the office of the Registrar and be made returnable before the Court en banc. *R.* v. *Smith,* 1 Terr. L. R. 189.

The application should be made to a Judge in Chambers at any time when the Court en banc is not sitting, but all further proceedings after the return must be taken there. *R.* v. *Hunter* (Man.), 5 W. L. R. 268. For form of notice see Gude's Practice, vol. 2, page 257.

RULE 5.—Preliminary objections should be raised promptly and by a substantive motion to quash. *R.* v. *Davidson,* 4 Terr. L. R. 425. Costs of quashing a conviction will not be given unless there is misconduct on the part of the informant or justice. *R.* v. *Banks,* 2 Terr. L. R. 81.

Where no record has been kept by a J. P. the conviction will be quashed. *R.* v. *McGregor* (B.C.), 2 W. L. R. 378, also when the evidence is taken by a stenographer not sworn. *R.* v. *L'Heureux* (Yuk.), 8 W. L. R. 975.

RULE 7.—A conviction by a J. P. under Liquor License Act was quashed without issue of writ, on the ground that the conviction was bad on its face, and no amendment was allowed. *R.* v. *Mahoney,* 18 W. L. R. 74.

RULE 8.—*Quo warranto.* The practice provided differs from that in England. There the question raised is the right of respondents to exercise the office; here, whether respondent is validly elected. Consequently, it is not necessary to shew that the respondent has accepted the office. *Park* v. *Street,* 6 Terr. L. R. 137.

RULE 9.—The Court in its discretion can refuse the application, *e.g.*, where a nominal relator is put forward. *R.* v. *Quesnel,* 10 W. L. R. 722, affirmed 11 W. L. R. 96, or the relator has no interest. *R.* v. *Ego* (B.C.), 15 W. L. R. 506.

RULE 10.—An appeal cannot be withdrawn without consent of the Court. *R.* v. *Ego* (B.C.), 15 W. L. R. 506.

A respondent who files a disclaimer under the Municipal Ordinance thereby admits the validity of the *quo warranto.* Such disclaimer operates a resignation of the seat and ends the suit save for the question of costs.

Relators should not be discouraged from bringing cases of invalid elections under notice at the peril of losing costs necessarily incurred. *R.* v. *Lamont,* 3 Terr. L. R. 371.

RULE 28.—The Court should not be chary in exercising the power of prohibition. *Hickson* v. *Wilson,* 2 Terr. L. R. 426.

Prohibition lies against a Municipal Court of Revision, *idem.*

As to prohibition against the Superintendent of the N. W. M. P., see *Re Nettleship,* 4 Terr. L. R. 148.

Prohibition may be granted though an appeal is launched. When want of jurisdiction is shewn the Court is bound to interfere. *Simpson* v. *Wildrig* (B.C.), 12 W. L. R. 643.

HABEAS CORPUS.

RULE 32.—Application cannot be made by writ of summons. *Gray* v. *Balkwill,* 5 W. L. R. 257.

Application can be made to every Judge in turn and each must decide afresh and independently. *Re Royston,* 10 W. L. R. 513; but the Court of Appeal has no jurisdiction to hear a motion in the first instance. *R.* v. *Rahamat Ali,* 14 W. L. R. 169.

Where a warrant of commitment does not allege that the prisoner has been convicted of an offence, the conviction cannot be referred to to support the warrant and prisoner will be discharged. If the warrant had shewn an offence, though insufficiently stated, it could be referred to.

An application to adjourn in order to procure the return of the conviction in order to support the warrant will not be allowed if the prisoner has been brought up on a habeas corpus; *aliter,* if he has not been brought up. *R.* v. *Lalonde,* 2 Terr. L. R. 281.

RULE 35.—It is a usual practice that the rule *nisi* should also require cause to be shewn why, if the rule is made absolute, the prisoner should not be discharged without issue of writ, but in order that the rule may be made absolute in this form it must be served on the magistrate, the keeper of the prisoner, and the prosecutor. *R.* v. *Farrar,* 1 Terr. L. R. 306.

RULE 39.—The name of the informant need not appear in the title. *Ex parte Harris,* 4 W. L. R. 530.

RULE 40.—On discharge of a motion by writ of certiorari, costs were given for the Crown in *R.* v. *Jones* (B.C.), 16 W. L. R. 429.

RULES FOR STATED CASES.

RULE 1.—A request "to state and sign a case setting forth the grounds on which the said conviction is supported," is not in accordance with the rule. *R.* v. *Early,* 3 W. L. R. 189 and 193.

A district Court Judge hearing an appeal from a summary conviction has no power to state a case. *R.* v. *McIntosh* (Man.), 12 W. L. R. 548.

RULE 3.—A personal recognizance for $100 was held sufficient in *R.* v. *Turnbull,* 2 Sask. L. R. 186.

RULE 5.—The condition cannot be waived, and if not in time the case will be struck out. *Morgan* v. *Edwards,* 29 L. J. M. C. 108; *Stanhope* v. *Thorsty,* 1 C. P. 428, quoted 3 W. L. R., page 190.

Where the justices did not deliver the case within the time limited, but subsequently tranusmitted it to the Court, it was held that the appellant, having done all he could, had not lost his right of appeal, and that the onus of shewing that the case was not sent to Court in a sealed envelope, as required by the rules, was on the respondent, as the Court would presume that the justices had complied with the rule. *R.* v. *Turnbull,* 2 Sask. L. R. 186.

RULE 9.—The Court may refuse to hear a reserved case where the question is merely academic. *R.* v. *Lynn,* 16 W. L. R. 324.

RULES FOR CONVEYANCE OF PRISONERS.

It is not necessary to set out the costs of commitment and conveyance to gaol in the conviction. *R.* v. *Code,* 1 Sask. L. R. 295.

RULES UNDER THE WINDING-UP ACT.

RULE 9.—A petition by an unregistered foreign company was not granted by Lamont, J., but a subsequent petition was granted by Prendergast, J. *Re Nelson Ford Co.,* 8 W. L. R. 79 and 546.

RULE 7.—The endorsement, made on the notice of motion served with the petition, though missing on the petition, was held to be sufficient. *Re Nelson Ford Company,* 8 W. L R. 546.

RULE 22.—Presumably a Judge will not stop a mortgagee selling when proceedings have been begun before order is made. *Re B. C. Tie Co.* (B.C), 9 W. L. R. 495.

In *Regina Windmill & Pump Co.*, 10 W. L. R. 65, the Judge made an order directing the sheriff to deliver goods seized under execution before winding-up proceedings to liquidate upon his paying or guaranteeing the amount for which the sheriff held the goods and all costs.

RULE 34.—No application will be entertained to vary the list in order to reopen the liability of contributories. *Re D. Wade Company, Ltd.*, 10 W. L. R. 527.

Appendix of Forms under The Rules of the Supreme Court

APPENDIX

FORMS.

No. 1 (Rule 1).

WRIT OF SUMMONS.

In the Supreme Court
Judicial District of .
Between
of (*residence*)
Plaintiff.
and
of (*residence*)
Defendant.

GEORGE V (*or name of the reigning Sovereign as the case may be*) by the Grace of God of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, KING (*or as the case may be*), Defender of the Faith, etc.

To the above named defendant:

You are notified that the plaintiff has entered an action against you in the above named court for the recovery of the claim or demand a statement of which is filed in court and annexed to this summons.

And you are commanded that if you dispute the said claim either in whole or in part you do within days from the service of this writ on you, exclusive of the day of such service, cause to be entered for you in the office of the local registrar of this court an appearance and within six days thereafter file with the local registrar a statement of the grounds on which such dispute is based.

And take notice that in default of your so doing the plaintiff may proceed in his said action and judgment may be given in your absence and without further notice to you.

Issued at the day of A.D. 19 .

I. J.,

[L.S.] *Local Registrar.*

MEMORANDA TO BE INDORSED ON WRIT.

N.B.—This writ is to be served within twelve months from the date thereof; or if renewed within six months from the day of the last renewal including the day of such date and not afterwards.

This writ was issued by the plaintiff who resides at and (*if residence over three miles from the local registrar's office*) whose "address for service" is at .

Or, This writ was issued by of , solicitor for the plaintiff, whose "address for service" (*if the solicitor's office is over three miles from the local registrar's office*) is at .

No. 2.

AFFIDAVIT FOR ENTRY OF APPEARANCE AS GUARDIAN (R. 46).

[*Heading as in Form 1.*]

I, , of , make oath and say as follows:

A. B., of , is a fit and proper person to act as guardian *ad litem* of the above-named infant defendant, and has no interest in the matters in question in this action (matter) adverse to that of the said infant, and the consent of the said *A. B.* to act as such guardian is hereto annexed.

Sworn, etc.

(*To this affidavit shall be annexed the document signed by such guardian in testimony of his consent to act.*)

No. 3.

THIRD PARTY NOTICE (R. 74).

19 . (*Here put the letter and number.*)

In the Supreme Court.

Between *A. B.,* plaintiff, and *C. D.,* defendant.

Notice filed , 19 .

To Mr. *X. Y.*

Take notice that this action has been brought by the plaintiff against the defendant (as surety for *M. N.,* upon a bond conditioned for payment of $2,000 and interest to the plaintiff.

The defendant claims to be entitled to contribution from you to the extent of one-half of any sum which the plaintiff may recover against him, on the ground that you are [his co-surety under the said bond; *or,* also surety for the said *M. N.,* in respect of the said matter, under another bond made by you in favour of the said plaintiff, dated the day of , A.D.]).

Or (as acceptor of a bill of exchange for $500, dated the day of , A.D. , drawn by you upon and accepted by the defendant, and payable three months after date.

The defendant claims to be indemnified by you against liability under the said bill, on the ground that it was accepted for your accommodation).

Or (as acceptor of a bill of exchange for $500, dated the day of , A.D. , drawn by you upon and accepted by the defendant, and payable three months after date.

The defendant claims to be indemnified by you against liability under the said bill, on the ground that it was accepted for your accommodation).

Or (to recover damages for a breach of a contract for the sale and delivery to the plaintiff of 1,000 tons of coal.

The defendant claims to be indemnified by you against liability in respect of the said contract, or any breach thereof, on the ground that it was made by him on your behalf and as your agent).

And take notice that, if you wish to dispute the plaintiff's claim in this action as against the defendant *C. D.*, or your liability to the defendant *C. D.*, you must cause an appearance to be entered for you within eight days after service of this notice.

In default of your so appearing, you will be deemed to admit the validity of any judgment obtained against the defendant *C. D.*, and your own liability to contribute or indemnify to the extent herein claimed which may be summarily enforced against you pursuant to the rules of the supreme court.

(Signed), *C. D.*
Or X. Y.,
Solicitor for the defendant, C. D.

No. 4.

NOTICE OF ENTRY OF APPEARANCE (R. 104).

[*Heading as in Form 1.*]

Take notice that I have this day entered an appearance at the local registrar's office, in the court house for the defendant to the writ of summons in this action.

Dated the day of , 19 .

(Signed), , of
Solicitor for the defendant.

To.....

No. 5

MEMORANDUM OF APPEARANCE IN GENERAL (R. 108).

In the Supreme Court.

19 . No.

Between , plaintiff, and , defendant.

Enter an appearance for in this action .

Dated the day of , 19 .

(Signed) *

Solicitor for , of .

*If this address be beyond three miles from the Local Registrar's office, an address for service within three miles thereof must be given

No. 6.

NOTICE LIMITING DEFENCE (R. 117).

[*Heading as in Form 1.*]

Take notice that the (*above-named*) defendant (*A. B.*) limits his defence to part only of the property mentioned in the writ of summons, namely, to the close, called "The Big Field."

Dated the day of , 19 .

(Signed), , of

, of

Solicitors for the above-named defendant.

To Messrs. , the plaintiff's solicitors.

No. 7.

NOTICE OF COUNTERCLAIM (R. 182).

[*Heading as in Form 1.*]

To the within-named *X. Y.*

Take notice that if you do not appear to the within counterclaim of the within-named *C. D.* within twenty days from the service of this defence and counterclaim upon you, you will be liable to have judgment given against you in your absence.

No. 8.

PRAECIPE FOR DIRECTION TO THE BANK (R. 211).

[*Heading as in Form 1.*]

Required a direction to the Bank to receive from $ under order dated (*or as the case may be*).

Date

A. B.,
Defendant's Solicitor.
(*or as the case may be*)

No. 9.

CONFESSION OF DEFENCE (R. 217).

[*Heading as in Form 1.*]

The plaintiff confesses the defence stated in the paragraph of the defendant's defence (*or,* of the defendant's further defence).

No. 10.

INTERLOCUTORY JUDGMENT IN DEFAULT OF APPEARANCE OR DEFENCE WHERE DEMAND UNLIQUIDATED (R. 226).

[*Heading as in Form 1.*]

The day of , 19 .

No appearance having been entered to the writ of summons (*or,* no defence having been delivered by the defendant) herein,

It is this day adjudged that the plaintiff recover against the defendant the value of the goods (*or* damages, *or both, as the case may be*) to be assessed.

No. 11.

NOTICE OF TRIAL (R. 238).

[*Heading as in Form 1.*]

Take notice of trial of this action (*or* of the issues in this action ordered to be tried) (*or as the case may be*) (*and whether with or without a jury*) for the next sittings of the court at to commence on the day of next.

X. Y., plaintiff's solicitor (*or as the case may be*).

Dated

To *Z.,* defendant's solicitor (*or as the case may be*).

No. 12.

AFFIDAVIT AS TO DOCUMENTS (R. 267).

[*Heading as in Form 1.*]

I, the above-named defendant *C.D.,* make oath and say as follows:

1. I have in my possession or power the documents relating to the matters in question in this suit set forth in the first and second parts of the first schedule hereto.

2. I object to produce the said documents set forth in the second part of the said first schedule hereto.

3. That (*here state upon what grounds the objection is made, and verify the facts as far as may be*).

4. I have had, but have not now, in my possession or power the documents relating to the matters in question in this suit set forth in the second schedule hereto.

5. The last-mentioned documents were last in my possession or power on (*state when*).

6. That (*here state what has become of the last-mentioned documents, and in whose possession they now are*).

7. According to the best of my knowledge, information, and belief, I have not now, and never had in my possession, custody, or power, or in the possession, custody, or power of my solicitors or agents, solicitor or agent, or in the possession, custody, or power of any other persons or person on my behalf, any deed, account, book of account, voucher, receipt, letter, memorandum, paper, or writing, or any copy of or extract from any such document, or any other document whatsoever, relating to the matters in question in this suit, or any of them, or wherein any entry has been made relative to such matters, or any of them, other than and except the documents set forth in the said first and second schedules hereto.

No. 13.

NOTICE TO PRODUCE DOCUMENTS (R. 270).

[*Heading as in Form 1.*]

Take notice that the (*plaintiff* or *defendant*) requires you to produce for his inspection the following documents referred to in your (*statement of claim,* or *defence,* or *affidavit, dated the day of A.D.*).

Describe documents required.

X. Y., Solicitor to the

To *Z.,* Solicitor for

No. 14.

NOTICE TO INSPECT DOCUMENTS (R. 271).

[*Heading as in Form 1.*]

Take notice that you can inspect the documents mentioned in your notice of the day of A.D. (*except the deed numbered in that notice*) at (*insert place of inspection*) on Thursday next the instant between the hours of 12 and 4 o'clock in the afternoon.

Or, that the (*plaintiff* or *defendant*) objects to giving you inspection of the documents mentioned in your notice of the day of , A.D. , on the ground that (*state the ground*):

No. 15.

Notice to Admit Documents (R. 308).

[*Heading as in Form 1.*]

Take notice that the plaintiff (*or* defendant) in this cause proposes to adduce in evidence the several documents hereunder specified, and that the same may be inspected by the defendant (*or* plaintiff) his solicitor or agent, at , on , between the hours of ; and the defendant (*or* plaintiff) is hereby required, within forty-eight hours from the last-mentioned hour, to admit that such of the said documents as are specified to be originals were respectively written, signed, or executed, as they purport respectively to have been; that such as are specified as copies are true copies; and such documents as are stated to have been served, sent or delivered, were so served, sent or delivered respectively; saving all just exceptions to the admissibility of all such documents as evidence in this cause.

Dated etc. (Signed)

G. H., solicitor (*or* agent) for plaintiff (*or* defendant).

To *E. F.*, solicitor (*or* agent) for defendant (*or* plaintiff).

(*Here describe the documents, the manner of doing which may be as follows:*)

Originals.

Description of Documents	Dates
Deed of covenant between A.B. and C.D. first part, and E.F. second part	January 1, 1848.
Indenture of lease from A.B. to C.D.	February 1, 1848.
Indenture of release between A.B. and C.D. first part, etc.	February 2, 1848.
Letter—defendant to plaintiff	March 1, 1848.
Policy of insurance on goods by ship "Isabella," on voyage from Oporto to London	December 3, 1847.
Memorandum of agreement between C.D., captain of said ship, and E.F.	January 1, 1848.
Bill of exchange for $100 at three months, drawn by A.B. on and accepted by C.D., indorsed by E.F. and G.H.	May 1, 1849.

Copies.

Description of Documents	Dates	Original or Duplicate served, sent or delivered, when, how and by whom
Register of baptism of A. B. in the parish of X. .	January 1, 1848.	
Letter—plaintiff to defendant	February 1, 1848.	Sent by General Post, February 2, 1848.
Notice to produce papers .	March 1, 1848 .	Served March 2, 1848, on defendant's attorney by E.F. of

No. 16.

NOTICE TO ADMIT FACTS (R. 310).

[*Heading as in Form 1.*]

Take notice that the plaintiff (*or* defendant) in this cause requires the defendant (*or* plaintiff) to admit, for the purposes of this cause only, the several facts respectively hereunder specified; and the defendant (*or* plaintiff) is hereby required, within six days from the service of this notice, to admit the said several facts, saving all just exceptions to the admissibility of such facts as evidence in this cause.

Dated, etc.

G. D., solicitor (*or* agent) for the plaintiff (*or* defendant).

To *E. F.*, solicitor (*or* agent) for the defendant (*or* plaintiff).

The facts, the admission of which is required, are:

1. That John Smith died on the 1st of January, 1900.
2. That he died intestate.
3. That James Smith was his only lawful son.
4. That Julius Smith died on the 1st of April, 1905.
5. That Julius Smith never was married.

No. 17.

ADMISSION OF FACTS, PURSUANT TO NOTICE (R. 310).

[*Heading as in Form 1.*]

The defendant (*or* plaintiff) in this cause, for the purposes of this cause only, hereby admits the several facts respectively hereunder specified, subject to the qualifications or limitations, if any, hereunder specified, saving all just exceptions to the admissibility of any such facts, or any of them, as evidence in this cause.

Provided that this admission is made for the purposes of this action only, and is not an admission to be used against the defendant (*or* plaintiff) on any other occasion, or by anyone other than the plaintiff (*or* defendant, *or party requiring the admission*).

Delivered, etc.

E. F., solicitor (*or* agent) for the defendant (*or* plaintiff).

To *G. H.*, solicitor (*or* agent) for the plaintiff (*or* defendant).

Facts Admitted	Qualifications or Limitations, if any, subject to which they are admitted
1. That John Smith died on the 1st of January, 1905.	
2. That he died intestate.	2.
3. That James Smith was his lawful son.	3. But not that he was his only lawful son.
4. That Julius Smith died.	4. But not that he died on the 1st of April, 1905.
5. That Julius Smith never was married.	5.

No. 15.

NOTICE TO PRODUCE (GENERAL FORM) (R. 313).

[*Heading as in Form 1.*]

Take notice, that you are hereby required to produce and show to the court on the trial of this action all books, papers, letters, copies of letters, and other writings and documents in your custody, possession, or power, containing any entry, memorandum, or minute relating to the matters in question in this action, and particularly

Dated the day of , 19 .

To the above named , & solicitor (*or* agent).

(Signed) , solicitor for the above-named .

No. 16.

FORM OF ORDERING ACCOUNTS AND INQUIRIES (R. 324).

[*Heading as in Form 1.*]

This court doth order that the following accounts and inquiry be taken and made; that is to say,

1. An account of the personal estate not specifically bequeathed of *A. B.*, deceased, the testator in the pleadings named, come to the hands of, etc.

2. An account of the testator's debts.

3. An account of the testator's funeral expenses.

4. An account of the testator's legacies and annuities (if any) given by the testator's will.

5. An inquiry what parts (if any) of the testator's said personal estate are outstanding or undisposed of.

To *G. H.*, solicitor (*or* agent) for the plaintiff (*or* defendant).

Facts Admitted	Qualifications or Limitations, if any, subject to which they are admitted
1. That John Smith died on the 1st of January, 1900.	
2. That he died intestate.	2.
3. That James Smith was his lawful son.	3. But not that he was his only lawful son.
4. That Julius Smith died.	4. But not that he died on the 1st of April, 1905.
5. That Julius Smith never was married.	5.

No. 18.

NOTICE TO PRODUCE (GENERAL FORM) (R. 313).

[*Heading as in Form 1.*]

Take notice, that you are hereby required to produce and show to the court on the trial of this action all books, papers, letters, copies of letters, and other writings and documents in your custody, possession, or power, containing any entry, memorandum, or minute relating to the matters in question in this action, and particularly .

Dated the day of , 19 .

To the above named , h solicitor (*or* agent).

(Signed) , solicitor for the above-named .

No. 19.

FORM OF ORDERING ACCOUNTS AND INQUIRIES (R. 324).

[*Heading as in Form 1.*]

This court doth order that the following accounts and inquiry be taken and made; that is to say,

1. An account of the personal estate not specifically bequeathed of *A. B.*, deceased, the testator in the pleadings named, come to the hands of, etc.

2. An account of the testator's debts.

3. An account of the testator's funeral expenses.

4. An account of the testator's legacies and annuities (if any), given by the testator's will.

5. An inquiry what parts (if any) of the testator's said personal estate are outstanding or undisposed of.

And it is ordered that the testator's personal estate not specifically bequeathed be applied in payment of his debts and funeral expenses in a due course of administration, and then in payment of the legacies and annuities (if any) given by his will.

(*If Ordered*).

And it is ordered that the following further inquiries and accounts be made and taken; that is to say,

6. An inquiry what real estate the testator was seised of or entitled to at the time of his death.

7. An account of the rents and profits of the testator's real estate received by, etc.

8. An inquiry what incumbrances (if any) affect the testator's real estate, or any and what parts thereof.

(*If Sale Ordered*).

9. An account of what is due to such of the incumbrancers as shall consent to the sale hereinafter directed in respect of their incumbrances.

10. An inquiry, what are the priorities of such last-mentioned incumbrances?

And it is ordered that the testator's real estate be sold with the approbation of the judge, etc.

And it is ordered that the further consideration of this cause be adjourned, and any of the parties are to be at liberty to apply as they may be advised.

No. 20.

CERTIFICATE OF LOCAL REGISTRAR (R. 330).

[*Heading as in Form 1.*]

In pursuance of the directions given to me by Mr. Justice , I hereby certify that the result of the accounts and inquiries which have been taken and made in pursuance of the judgment (*or* order) in this cause dated the day of , is as follows:

1. The defendants , the executors of the testator, have received personal estate to the amount of $, and they have paid, or are entitled to be allowed on account thereof, sums to the amount of $, leaving a balance due from (*or* to) them of $ on that account.

The particulars of the above receipts and payments appear in the account marked , verified by the affidavit of , filed on the day of , and which account is to be filed with this certificate, except that in addition to the sums appearing on such account to have been received, the said defendants are charged with the following sums (*state the same here or in a schedule*) and except that I have disallowed the items of disbursement in the said account numbered , and

(*Or in cases where a transcript has been made.*)

The defendants have brought in an account verified by the affidavit of , filed on the day of , and which account is marked , and is to be filed with this certificate. The account has been altered, and the account marked , and which is also to be filed with this certificate, is a transcript of the account as altered and passed.

2. The debts of the testator which have been allowed, are set forth in the schedule hereto, and with the interest thereon and costs mentioned in the schedule are due to the persons therein named, and amount altogether to $.

3. The funeral expenses of the testator amount to the sum of $, which I have allowed the said executors in the said account of personal estate.

4. The legacies given by the testator are set forth in the schedule hereto, and with the interest therein mentioned remain due to the persons therein named, and amount altogether to $.

5. The outstanding personal estate of the testator consists of the particulars set forth in the schedule hereto.

6. The real estate to which the testator was entitled consists of the particulars set forth in the schedule hereto.

7. The defendants have received rents and profits of the testator's real estate, etc. (*in a form similar to that provided with respect to the personal estate*).

8. The incumbrances affecting the said testator's real estate are specified in the schedule hereto.

9. The real estates of the testator directed to be sold, have been sold, and the purchase moneys amounting altogether to $ have been paid into Court.

N.B.—The above numbers are to correspond with the numbers in the order after each statement; the evidence produced is to be stated as follows:

The evidence produced on this account (*or* inquiry) consists of the probate of the testator's will, the affidavit of *A. B.* filed , and paragraph numbered of the affidavit of *C. D.*, filed .

No. 21.

ENTRY OF SPECIAL CASE (R. 346).

[*Heading as in Form 1.*]

Set down the dated the day of , 19 , of Mr. the in this for hearing as a special case.
Dated, etc.

No. 22.

MODE OF MARKING EXHIBITS AT TRIAL (R. 359).

[*Heading as in Form 1.*]

This exhibit (the property of) is produced by the plaintiff (*or* defendant, *as the case may be*) this day of , 19 .

A. B.,
Local Registrar.

No. 23.

SHORT ORDER FOR ISSUE OF COMMISSION TO EXAMINE WITNESSES (R. 366).

[*Heading as in Form 1.*]

Upon hearing and upon reading the affidavit of , filed the day of , 19 , and
It is ordered that the be at liberty to issue a commission for the examination of witnesses on behalf at .
And it is further ordered that the trial of this action be stayed until the return of the said commission, [the usual long order to be drawn up, and unless agreed upon by the parties within one week, to be settled by the local registrar (*or as the case may be*)], and that the costs of this application be
Dated the day of , 19 .

Or No. 23.

LONG ORDER FOR COMMISSION TO EXAMINE WITNESSES.

[*Heading as in Form 1.*]

Upon hearing and upon reading the affidavit of , filed the day of , 19 , and
It is ordered as follows:

1. A commission may issue directed to of commissioner named by and on behalf of the [and to of commissioner named by and on behalf of the] for the examination [upon interrogatories and] *viva voce* of witnesses on behalf of the said and respectively at aforesaid before the said commissioner.

2. Both the said and shall be at liberty to examine [upon interrogatories and] *viva voce* [upon the subject matter thereof or arising out of the answers thereto] such witnesses as may be produced on their behalf, with liberty to the other party to cross examine the said witnesses [upon cross interrogatories and] *viva voce,* the party producing the witness for examination being at liberty to re-examine him *viva voce;* and all such *viva voce* questions, whether on examination, cross examination, or re-examination, shall be reduced into writing, and, with the answers thereto, returned with the said commission.

[3. Within days from the date of this order the solicitors or agents of the said and shall exchange the interrogatories they propose to administer to their respective witnesses, and shall also, within days from the exchange of such interrogatories, exchange copies of the cross interrogatories intended to be administered to the said witnesses.]

4. days previously to the sending out of the said commission, the solicitor of the said shall give to the solicitor of the said notice in writing of the mail or other conveyance by which the commission is to be sent out.

5. days previously to the examination of any witness on behalf of the said or respectively, notice in writing signed by the commissioner of the party on whose behalf the witness is to be examined, and stating the time and place of the intended examination, and the names of the witnesses intended to be examined, shall be given to (name and address of the person named for this purpose) [*where a commissioner may be appointed for each party add* and shall be given also to the commissioner of the other party] by delivering the notice to them personally or by leaving it at their usual place of abode or business [and if the commissioner of that party neglect to attend pursuant to the notice, then the commissioner of the party on whose behalf the notice is given shall be at liberty to proceed with and take the examination of the witness or witnesses *ex parte,* and adjourn any meeting or meetings, or continue the same, from day to day until all the witnesses intended to be examined by virtue of the notice have been examined, without giving any further or other notice of the subsequent meeting or meetings].

6. In the event of any witness on his examination, cross examination, or re-examination, producing any book, document, letter, paper, or writing, and refusing, for good cause to be

stated in his deposition, to part with the original thereof, then a copy thereof, or extract therefrom, certified by the commissioner [or commissioners present] to be a true and correct copy or extract, shall be annexed to the witness's deposition.

7. Each witness to be examined under the commission shall be examined on oath, affirmation, or otherwise in accordance with his religion by or before the said [commissioners or] commissioner.

8. If any one or more of the witnesses do not understand the English language (the interrogatories, cross interrogatories, and *viva voce* questions, if any, being previously translated into the language with which he or they is or are conversant), then the examination shall be taken in English through the medium of an interpreter or interpreters, to be naminated by the [commissioners or] commissioner, and to be previously sworn according to his or their several religions by or before the said [commissioners or] commissioner truly to interpret the questions to be put to the witness or witnesses, and his and their answers thereto.

9. The depositions to be taken under and by virtue of the said commission shall be subscribed by the witness or witnesses, and by the [commissioners or] commissioner who shall have taken such depositions.

10. The [interrogatories, cross interrogatories, and] depositions, together with any documents referred to therein, or certified copies thereof or extracts therefrom, shall be sent to the local registrar of the supreme court for the above named judicial district on or before the day of , or such further or other day as may be ordered, enclosed in a cover under the seal or seals of the said [commissioners or] commissioner, and office copies thereof may be given in evidence on the trial of this action by and on behalf of the said and respectively, saving all just exceptions, without any other proof of the absence from this country of the witness or witnesses therein named, than an affidavit of the solicitor or agent of the said or respectively, as to this belief of the or agent of the said or respectively, as to his belief of the .

11. The trial of this cause is to be stayed until the return of the said commission.

12. The costs of this order, and of the commission to be issued in pursuance hereof, and of the [interrogatories, cross interrogatories, and] depositions to be taken thereunder, together with any such document, copy, or extract as aforesaid, and official copies thereof, and all other costs incidental thereto, shall be .

Dated the day of , 19 .

No. 24.

OF SUBPOENA (R. 388).

[*Heading as in Form 1.*]

Required writ of subpœna on behalf of the directed to , returnable .

Dated the .

(Signed) .

(Address) .

Solicitor for the .

No. 25.

SUBPOENA AD TESTIFICANDUM (R. 389).

19 . (*Here put the letter and number.*)

In the Supreme Court.

Between , plaintiff, and , defendant.

GEORGE V, by the grace of God, etc., to (*the names of three witnesses may be inserted*) greeting:

We command you to attend before at on day the day of , 19 , at the hour of in the noon, and so from day to day until the above cause is tried, to give evidence on behalf of the plaintiff (*or* defendant).

Witness, etc.

No. 26.

HABEAS CORPUS AD TESTIFICANDUM (R. 389).

[*Heading as in Form 1.*]

GEORGE V, by the grace of God, etc., to the (*keeper of our prison at*)

We command you that you bring , who it is said is detained in our prison under your custody , before at on day the day of at the hour of in the noon, and so from day to day until the above action is tried, to give evidence on behalf of the . And that immediately after the said shall have so given his evidence you safely conduct him to the prison from which he shall have been brought.

Witness, etc.

This writ was issued, etc.

No. 27.

Subpoena Duces Tecum (R. 389).

[*Heading as in Form 1.*]

George V, by the grace of God, etc., to (*the names of three witnesses may be inserted*) greeting:

We command you to attend before at , on day the day of , 19 , at the hour of in the noon, and so from day to day until the above cause is tried, to give evidence on behalf of the , and also to bring with you and produce at the time and place aforesaid (*specify documents to be produced*).

Witness, etc.

No. 28.

Order Under The Foreign Tribunals Evidence Act, 1856 (R. 402).

In the Supreme Court of Saskatchewan.

(a) Name of Judge

(*a*) in Chambers.

In the matter of Foreign Tribunals Evidence Act, 1856 (19 and 20 Vict. c. 113).

And in the matter of a (*civil or commercial or criminal*) proceeding now pending before (*b*) intituled as follows:

(b) Description of Foreign Tribunal

Between , plaintiff, and , defendant.

Upon reading the affidavit (if any) of filed the day of 19 , and the certificate of (*c*) that proceedings are pending in the (*b*) in (*d*) and that such court is desirous of obtaining the testimony of (*e*) .

(c) Name and description of the Ambassador, Minister, Diplomatic Agent, or Consul of the Foreign Country.

(d) Name of Foreign Country.

(e) Names of witnesses.

(f) Name and address of examiner.

(g) Place appointed for examination.

(h) Description of documents, if any, required to be produced

It is ordered that the said witness do attend before (*f*) who is hereby appointed examiner herein, at (*g*) on the day of 19 , at o'clock, or such other day and time as the said examiner may appoint, and do there submit to be examined upon oath, or affirmation, touching the testimony so required as aforesaid, and do then and there produce (*h*).

And it is further ordered that the said examiner do take down in writing the evidence of the said witness, or witnesses, according to the Rules and Practice of the supreme court pertaining to the examination and cross examination of witnesses (*or as may be otherwise directed*); and do cause each and every such witness to sign his or her depositions in his, the said examiner's presence; and do sign the depositions taken in pursuance of this order, and when so completed, do transmit the same, together with this order, to the registrar, Regina, for transmission to the president of the said tribunal desiring the evidence of such witness or witnesses.

Dated this day of 19 .

No. 29.

CERTIFICATE UNDER THE FOREIGN TRIBUNALS EVIDENCE ACT, 1856 (R. 404).

I, , registrar of the Supreme Court of Saskatchewan, hereby certify that the documents annexed hereto are (1) the original order of the supreme court dated the day of , 19 , made in the matter of pending in the at in the of directing the examination of certain witnesses to be taken before , and (2) the examination and depositions taken by the said pursuant to the said order, and duly signed and completed by him on the day of 19 .

Dated this day of 19 .

FORMS OF JUDGMENT.

(Rule 444.)

No. 30.

DEFAULT OF APPEARANCE AND DEFENCE IN CASE OF LIQUIDATED DEMAND—TAXED COSTS.

19 . (*Here put the letter and number.*)

In the Supreme Court, Judicial District of .

Between *A. B.*, plaintiff, and *C. D.* and *E. F.*, defendants.

The day of , 19 .

The defendants (*or* the defendant, *C. D., and if defendant resides abroad, add* residing out of the jurisdiction. *If service was substituted, add* having been served by substituted service and) not having appeared to the writ of summons herein (*or* delivered any defence), it is this day adjudged that the plaintiff recover against the said defendant $, and costs, to be taxed.

The above costs have been taxed and allowed at $, as appears by a taxing officer's certificate, dated this day of .

No. 31.

IN DEFAULT OF APPEARANCE OR DEFENCE, WHERE DEMAND UNLIQUIDATED.

[*Heading as in Form 1.*]

The day of , 19 .

No *"appearance having been entered to the writ of summons" or "defence having been delivered by the defendant"* herein. .

It is this day adjudged that the plaintiff recover against the defendant (*"the value of the goods" or "damages," or both, as the case may be*), to be assessed.

The amount found due to the plaintiff under this judgment having been certified at the amount of $, as appears by *"the local registrar's certificate" or "the local master's finding under order,"* filed the day of , 19 .

It is adjudged that the plaintiff recover against the defendant $, and costs to be taxed.

The above costs have been taxed (*etc., as in Form 30*).

No. 32.

IN DEFAULT OF APPEARANCE IN ACTION FOR RECOVERY OF LAND.

[*Heading as in Form 1.*]

The day of .

No appearance having been entered to the writ of summons herein, it is this day adjudged that the plaintiff recover possession of the land in the statement of claim annexed to the writ described as .

And it is further adjudged that the plaintiff recover against the defendant damages to be assessed.

The amount found due to the plaintiff under this judgment having been certified at the sum of $, as appears by (*"the local registrar's certificate" or "the local master's finding under order"*) filed the day of 19 .

It is adjudged that the plaintiff recover against the defendant $, and costs to be taxed.

The above costs have been taxed and allowed (*etc., as in Form 30*).

No. 33.

FOR WANT OF DEFENCE—EJECTMENT.

[*Heading as in Form 1.*]

The day of .

No statement of defence having been delivered herein, it is this day adjudged that the plaintiff recover possession of the land in the statement of claim herein mentioned and described as and costs to be taxed.

The above costs have been taxed (*etc., as in Form 30*).

.....

Plaintiff's Solicitor.

No. 34.

AFTER ASSESSMENT OF DAMAGES.

[*Heading as in Form 1.*]

The day of , 19 .

The plaintiff having on the day of , 19 , obtained interlocutory judgment herein against the defendant for damages to be assessed, and the amount found due to the plaintiff having been certified at $, as appears by (*"the local registrar's certificate" or "the local master's finding under order"*).

It is adjudged that the plaintiff recover against the said defendant $, and costs to be taxed.

The above costs have been taxed (*etc., as in Form 30*).

.....

Plaintiff's Solicitor.

No. 35.

AT TRIAL BY JUDGE WITHOUT A JURY.

[*Heading as in Form 1.*]

This action coming on for trial (the day of and) this day, before , in the presence of counsel for the plaintiff and the defendants (*or, if some of the defendants do not appear,* for the plaintiff and the defendant *C. D.,* no one appearing for the defendants *E. F.* and *G. H.,* although they were duly served with notice of trial as by the affidavit of filed the day of appears,) upon hearing the probate of the will of , the answers of the defendants *C. D., E. F.,* and *G. H.,* on examination for discovery, the admission in writing, dated and signed by (Mr. , the solicitor for) the plaintiff *A. B.,* and by (Mr. , the solicitor for) the defendant *C. D.,* the affidavit of , filed the day of , the evidence of , taken on their oral examination at the trial, and an exhibit marked X, being an indenture dated, etc., and made between (*parties*) and what was alleged by counsel on both sides: This court doth declare, etc.

And this court doth order and adjudge, etc.

No. 36.

AFTER TRIAL WITH A JURY (FOR PLAINTIFF).

[*Heading as in Form 1.*]

Dated and entered the day of (*date of order of direction for judgment*).

This action having on the been tried before with a jury, and the jury having found (*state findings as in certificate*), and the said having ordered that judgment be entered for the plaintiff for $, and costs of action (*or as the case may be*): Therefore it is adjudged that the plaintiff recover against the defendant $, and his costs to be taxed.

The above costs have been allowed (*etc., as in Form 30*).

No. 37.

After Trial With a Jury (For Defendant).

[*Heading as in Form 1.*]

Dated and entered the day of (*date of order of direction for judgment*).

This action having on the been tried before with a jury and the jury having found (*state findings as in certificate*) and the said having ordered that judgment be entered for the defendant.

Therefore it is adjudged that the plaintiff recover nothing against the defendant and that the defendant recover against the plaintiff his costs of defence to be taxed.

The above costs have been taxed (*etc., as in Form 30*).

.....

Solicitor for the Defendant.

No. 38.

On an Award After Trial.

[*Heading as in Form 1.*]

The day of .

This action having come on for trial at the held at when it was ordered by the court by consent of the parties their counsel and solicitors, that the jury find a verdict for the plaintiff subject to the award of with all the powers as to certifying or otherwise of a judge of the supreme court, and who was empowered to direct judgment for either party, or a nonsuit, as he should think proper (*as in order*), the said order directing that the costs of the cause abide the event, and the costs of the reference and the award be in the discretion of the arbitrator (*as in order*). And the said arbitrator having by his award herein dated the

day of , found in favour of the for the sum of $, and directed that (*directions as to costs, etc., as in award*).

Therefore it is this day adjudged that the recover against the $ and costs to be taxed.

The above costs have been taxed (*etc., as in Form 30*).

No. 39.

ON AWARD—ORDER OF REFERENCE BY CONSENT AT CHAMBERS.

[*Heading as in Form 1.*]

The day of .

This action having by an order of dated the day of , been referred to the award of , with all the powers as to certifying and amending of a judge of the supreme court, the said order directing that the costs of the cause abide the event, and the costs of the reference and award be in the discretion of the arbitrator (*as in order*), and that the successful party be at liberty days after service of a copy of the award on the other party's solicitor or agent, to sign final judgment for any sum found due by the award, and for all costs under the order and award, and for costs of judgment (*as in order*). And the said arbitrator having by his award herein dated the day of found in favour of the for the sum of $, and directed that (*directions as to costs, etc., as in award*).

Therefore it is this day adjudged that the recover against the $ and costs to be taxed.

The above costs have been taxed (*etc., as in Form 30*).

No. 40.

IN COURT FOR AMOUNT TO BE ASCERTAINED.

[*Heading as in Form 1.*]

Dated the .

The action having on the been tried before the Honourable Mr. Justice , and the said Mr. Justice having ordered that judgment be entered for the plaintiff for such amount as shall be found due by the local registrar for damages (*or, as the case may be, following the terms of reference*), it is this day adjudged that the plaintiff recover against the defendant such amount as shall be found due by the local registrar for damages (*or, as the case may be*) and costs to be taxed.

The local registrar having certified the amount due to the plaintiff hereunder at $, it is adjudged that the plaintiff recover against the defendant the said sum of $ and costs to be taxed.

The above costs have been taxed (*etc., as in Form 30*).

No. 41.

After Trial of Questions of Account by Local Registrar.

[*Heading as in Form 1.*]

The day of .

The questions of account in this action having been referred to and he having found that there is due from the to the the sum of $ and directed that the do pay the costs of the reference .

It is this day adjudged that the recover against the said $ and costs to be taxed.

The above costs have been taxed (*etc., as in Form 30*).

No. 42.

Upon Motion for Judgment.

[*Heading as in Form 1.*]

The day of .

This day before Mr. *X.* of counsel for the plaintiff (*or as the case may be*), moved on behalf of the said (*state judgment moved for*), and the said Mr. *X.* having been heard of counsel for and Mr. *Y.* of counsel for the court adjudged .

No. 43.

Alternative Form to No. 42.

[*Heading as in Form 1.*]

The day of 19 (*date of order of court*).

This action having on the day of , 19 , come on before the court on motion for judgment on behalf of the and the court after hearing counsel for the having ordered that (*as in order of court*).

It is this day adjudged that the recover against the the sum of $ and costs to be taxed.

The above costs have been taxed and allowed at $ as appears by a local registrar's certificate dated the day of , 19 .

Judgment entered the day of 19 .

No. 44.

After Trial by Court Without Jury.

[*Heading as in Form 1.*]

Dated and entered the day of .

This action having on the day of been tried before the Honourable Mr. Justice without a jury in the Judicial District of and the said on the day of having ordered that judgment be entered for the for $.

It is this day adjudged that the recover from the $ and costs to be taxed.

The above costs have been taxed (*etc., as in Form 30*).

No. 45.

Of Dismissal on Nonappearance of Plaintiff.

[*Heading as in Form 1.*]

Dated the .

This action having on the been called on for hearing before the Honourable Mr. Justice , and the plaintiff having failed to appear, and the defendant having thereupon become entitled, under rule 350, to judgment dismissing the action, and the said Mr. Justice having ordered that judgment be entered accordingly, therefore it is adjudged that this action do stand dismissed out of this court with costs.

And it is further adjudged that the defendant recover against the plaintiff his costs to be taxed.

The above costs have been taxed, etc.

No. 46.

IN PURSUANCE OF ORDER.

[*Heading as in Form 1.*]

The day of .

Pursuant to the order of dated , whereby it was ordered and default having been made .

It is this day adjudged that the plaintiff recover against the said defendant $ and costs to be taxed.

The above costs have been taxed (*etc., as in Form 30*).

No. 47.

FOR DEFENDANT'S COSTS ON DISCONTINUANCE.

[*Heading as in Form 1.*]

The day of .

The plaintiff having by a notice in writing dated the day of (*wholly discontinued this action or withdrawn his claim in this action for, or withdrawn so much of his claim in this action as relates to or as the case may be*).

It is this day adjudged that the defendant recover against the plaintiff costs to be taxed.

The above costs have been taxed (*etc., as in Form 30*).

No. 48.

FOR PLAINTIFF'S COSTS AFTER CONFESSION OF DEFENCE.

[*Heading as in Form 1.*]

The day of .

The defendant in his defence herein having alleged a ground of defence which arose after the commencement of this action, and the plaintiff having on the day of , delivered a confession of that defence.

It is this day adjudged that the plaintiff recover against the defendant costs to be taxed.

The above costs have been taxed (*etc., as in Form 30*).

No. 48.

FOR COSTS AFTER ACCEPTANCE OF MONEY PAID INTO COURT.

[*Heading as in Form 1.*]

The day of

The defendant having paid into court in this action the sum of $ in satisfaction of the plaintiff's claim, and the plaintiff having by his notice dated the day of , accepted that sum in satisfaction of his action cause of action, and the plaintiff's costs herein having been taxed, and the defendant not having paid the same within forty-eight hours after the said taxation,

It is this day adjudged that the plaintiff recover against the defendant costs to be taxed.

The above costs have been taxed (*etc., as in Form 80*).

No. 50.

WHERE NO JUDGMENT ENTERED AT TRIAL BY JURY.

[*Heading as in Form 1.*]

The day of (*date of order of court*).

This action having on the been tried before and a jury and the jury having found and the not having thought fit to order any judgment to be entered. Now on motion before the court for judgment on behalf of the , the court having

It is this day adjudged that the recover against the the sum of $ and costs to be taxed.

The above costs have been taxed (*etc., as in Form 80*).

Judgment entered the day of

No. 51.

ON MOTION AFTER TRIAL OF ISSUE.

[*Heading as in Form 1.*]

The day of (*date of order of court*).

The issues (*or* questions) of fact arising in this action by the order dated the day of ordered to be tried before having on the day of been tried before and the having found Now on motion before the court for judgment of the , the court having

It is this day adjudged that the recover against the the sum of $ and costs to be taxed.

The above costs have been taxed (*etc., as in Form 80*).

No. 49.

FOR COSTS AFTER ACCEPTANCE OF MONEY PAID INTO COURT.

[*Heading as in Form 1.*]

The day of .

The defendant having paid into court in this action the sum of $ in satisfaction of the plaintiff's claim, and the plaintiff having by his notice dated the day of , accepted that sum in satisfaction of his entire cause of action, and the plaintiff's costs herein having been taxed, and the defendant not having paid the same within forty-eight hours after the said taxation.

It is this day adjudged that the plaintiff recover against the defendant costs to be taxed.

The above costs have been taxed (*etc., as in Form 30*).

No. 50.

WHERE NO JUDGMENT ENTERED AT TRIAL BY JURY.

[*Heading as in Form 1.*]

The day of (*date of order of court*).

This action having on the , been tried before and a jury and the jury having found and the not having thought fit to order any judgment to be entered. Now on motion before the court for judgment on behalf of the , the court having .

It is this day adjudged that the recover against the the sum of $ and costs to be taxed.

The above costs have been taxed (*etc., as in Form 30*).

Judgment entered the day of .

No. 51.

ON MOTION AFTER TRIAL OF ISSUE.

[*Heading as in Form 1.*]

The day of (*date of order of court*).

The issues (*or* questions) of fact arising in this action by the order dated the day of ordered to be tried before having on the day of been tried before and the having found . Now on motion before the court for judgment of the , the court having .

It is this day adjudged that the recover against the the sum of $ and costs to be taxed.

The above costs have been taxed (*etc., as in Form 30*).

No. 52.

AFTER MOTION ON LEAVE RESERVED.

[*Heading as in Form 1.*]

The day of (*date of order of court*).

This action having on the , been tried before and a jury and the jury having found and having ordered that judgment be entered for subject to leave to the to move to set aside the judgment, now on motion before the court for judgment on behalf of the , the court having .

It is this day adjudged that the said judgment (do stand *or* be set aside and that the recover against the the sum of $ and costs to be taxed).

The above costs have been taxed (*etc., as in Form 30*).

No. 53.

ORDER BY CONSENT FOR JUDGMENT.

[*Heading as in Form 1.*]

Upon hearing , and upon reading , and by consent, it is ordered that the plaintiff be at liberty to sign final judgment herein for the amount claimed with interest, if any, and costs to be taxed, and that the costs of this application be costs in the action.

Dated .

No. 54.

PRAECIPE FOR FIERI FACIAS (R. 464).

19 . (*Here put the letter and number*).

In the Supreme Court.

Between *A. B.* , plaintiff, and *C. D.* and others, defendants.

Required a writ of *fieri facias* directed to the sheriff of , to levy against *C. D.* the sum of $ and interest thereon at the rate of per centum per annum from the day of (*and costs*) to .

Judgment (*or* order) dated day of , 19 .

X. Y.,

Solicitor for (*party on whose behalf writ is to issue*).

No. 55.

PRAECIPE FOR WRIT OF POSSESSION.

[*Title as in No. 1, supra.*]

Required a writ of possession directed to the sheriff of , to deliver possession to *A. B.* of .
Judgment dated day of , 19 .

No. 56.

PRAECIPE FOR WRIT OF POSSESSION AND FI. FA. COMBINED.

[*Title as in No. 1, supra.*]

Required a writ of possession and *fi. fa.* combined, directed to the sheriff of to deliver possession to the (1) of the land and premises in the (2) herein mentioned.
And also to levy against , of , in the district of , the sum of (3) , and interest at the rate of $5 per centum per annum on the said amount, from the day of (4) (5) , dated the day of , 19 .
Dated the day of , 19 .
(Signed) .
(Address) .
Solicitor for the .

(1) "Plaintiff" or as may be.
(2) "Judgment" or "order." If for part only of premises say "described as."
(3) "$ debt, and $ cost," or as may be.
(4) If part paid, add "indorsed to levy $ and interest from," etc., as indorsed on writ.
(5) "Judgment" or "order."

No. 57.

PRAECIPE FOR WRIT OF DELIVERY.

[*Title as in No. 1, supra.*]

Required a writ of possession directed to the sheriff of , to make delivery to *A. B.* of .

No. 58.

PRAECIPE FOR WRIT OF ATTACHMENT.

[*Title as in No. 1, supra.*]

Required in pursuance of order dated day of , an attachment directed to the sheriff of , against *C. D.* for not delivering to *A. B.* .

No. 59.

PRAECIPE FOR CERTIORARI.

[*Heading as in Form 1.*]

Required in pursuance of order dated , a writ of *certiorari* directed to .

Dated, etc.

No. 60.

WRIT OF EXECUTION (R. 466).

In the Supreme Court. Judicial District of .

Between , of , plaintiff, and , of , defendant.

GEORGE THE FIFTH (*or the name of the reigning Sovereign as the case may be*) by the grace of God of the United Kingdom of Great Britain and Ireland and of the British Dominions Beyond the Seas, King (*or as the case may be*), Defender of the Faith, etc.

To the sheriff of the Judicial District:

You are commanded that of the goods (*or* lands, *as the case may be*) of in the judicial district, you cause to be made dollars and cents which lately by the judgment (*or* order *as the case may be*) of the said court recovered against him and that you have the said money and in what manner you shall have executed this writ make appear to the said court at , immediately after the execution thereof before the said court at together with this writ.

Issued at this day of A.D. 19 .

I. J.,

[L.S.] *Local Registrar.*

No. 61.

WRIT OF POSSESSION AND FI. FA.

[*Title as in No. 1, supra.*]

GEORGE V, by the grace of God, etc.

To the sheriff of , greeting:

Whereas lately in our supreme court by a (1) of the said same court, it was (2) that the (3) recover possession of all that (4) with the appurtenances in your bailiwick: Therefore we command you that you enter the same, and without delay you cause the said to have possession of the said land and premises with the appurtenances. And we further command you that of the

(1) "Judgment" or "order."
(2) "Adjudged" or "ordered."
(3) "Plaintiff," or as may be.
(4) Describe premises as in judgment or order.

goods and chattels of the said in your bailiwick, you cause to be made the sum of $ and also interest thereon at the rate of $5 per centum per annum, from the day of , which said sum of money and interest were in the said action by the (5) to be paid by the said to together with certain costs in the said (6) mentioned, and which costs have been taxed and allowed by the taxing officer of our said court at the sum of $ as appears by the certificate of the said taxing officer dated the day of . And that of the goods and chattels of the said in your bailiwick you further cause to be made the said sum of $ (7) together with interest thereon at the rate of $5 per centum per annum from the day of , and that you have that money and interest before us in our said court immediately after the execution hereof to be paid to the said in pursuance of the said (8) . And in what manner you have executed this our writ make appear to us in our supreme court immediately after the execution thereof. And have there then this writ.

(5) "Judgment therein adjudged" or "order dated the day of ordered."

(6) "Judgment" or "order."

(7) Costs.

(8) "Judgment" or "order."

Issued at, etc.

This writ was issued by of agent for , of solicitor for the who resides at .

The defendant is a and resides at in your bailiwick.

Cause possession to be delivered to the (9) of the within mentioned premises (10) .

And levy $ and interest at $5 per centum per annum, from the day of 19 , and $ for costs of execution, besides poundage fees and expenses of execution.

(9) "Plaintiff," or as may be.

(10) If for part only of premises, say "described as."

No. 62.

WRIT OF POSSESSION.

[*Title as in No. 1, supra.*]

GEORGE V, by the grace of God, etc.

To the sheriff of , greeting:

Whereas lately in our supreme court, by a judgment of the said court (*A. B.* recovered) *or* (*E. F.* was ordered to deliver to *A. B.*) possession of all that with the appurtenances in your bailiwick: Therefore, we command you that you enter the same, and without delay you cause the said *A. B.* to have possession of the said land and premises with the appurtenances. And in what manner, etc. And have you there then this writ.

Witness, etc.

No. 63.

WRIT OF DELIVERY.

[*Title as in No. 1, supra.*]

GEORGE V, by the grace of God, etc.

To the sheriff of , greeting:

We command you, that without delay you cause the following chattels, that is to say (*here enumerate the chattels recovered by the judgment or order for the return of which execution has been ordered to issue*), to be returned to *A. B.*, which the said *A. B.* lately in our supreme court, recovered against *C. D.* (*or C. D.* was ordered to deliver to the said *A. B.*) in an action in our said court.* And we further command you, that if the said chattels cannot be found in your bailiwick, you distrain the said *C. D.* by all his lands and chattels in your bailiwick, so that neither the said *C. D.* nor anyone for him do lay hands on the same until the said *C. D.* render to the said *A. B.* the said chattels.† And in what manner, etc. And have you there then this writ.

Issued at, etc.

No. 64.

The like, but instead of a distress until the chattel is returned, commanding the sheriff to levy on defendant's goods the assessed value of it.

(*Proceed as in the preceding form until the *, and then thus:*) And we further command you, that if the said chattels cannot be found in your bailiwick, of the goods and chattels of the said *C. D.* in your bailiwick you cause to be made $ (*the assessed value of the chattels*).† And in what manner, etc. And have you there then this writ.

Witness, etc.

No. 65.

(*If in either of the preceding forms it is wished to include damages, costs, and interest, proceed to the † and continue thus:*)

And we further command you that of the goods and chattels of the said *C. D.* in your bailiwick, you cause to be made the sum of $ (*damages*). And also interest thereon at the rate of $5 per centum per annum, from the day of , which said sum of money and interest were in the said action by the judgment therein (*or* by order) dated the day of adjudged (*or* ordered) to be paid by the said *C. D.* to *A. B.* together with certain costs in the said

judgment (*or* order) mentioned, and which costs have been taxed and allowed by the taxing officer of our said court at the sum of $ as appears by the certificate of the said taxing officer dated the day of . And that of the goods and chattels of the said *C. D.* in your bailiwick you further cause to be made the said sum of $ (*costs*), together with interest thereon at the rate of $5 per centum per annum from the day of and that you have that money and interest before us in our said court immediately after the execution hereof to be paid to the said *A. B.* in pursuance of the said judgment (*or* order).

And in what manner, etc.

And have you there this writ.

Issued at, etc.

No. 66.

WRIT OF ATTACHMENT.

[*Title as in No. 1, supra.*]

GEORGE V, by the grace of God, etc.

To the sheriff of , greeting:

We command you to attach *C. D.* so as to have him before us in our supreme court wheresoever the said court shall then be, there to answer to us, as well touching a contempt which he it is alleged hath committed against us, as also such other matters as shall be then and there laid to his charge, and further to perform and abide such order as our said court shall make in this behalf, and hereof fail not, and bring this writ with you.

Issued at, etc.

Indorsement.—This writ was issued by, etc., solicitor for the , who reside at , and was issued pursuant to order dated the day of , 19 , for such default as is therein mentioned.

No. 67.

WRIT OF SEQUESTRATION.

[*Title as in No. 1, supra.*]

GEORGE THE FIFTH, by the grace of God, etc.

To (*names of not less than four commissioners*), greeting:

Whereas lately in our Supreme Court for the Judicial District of in a certain action there depending, wherein *A. B.* is plaintiff and *C. D.* and others are defendants (*or,* in a certain matter then depending, intituled "In the matter of

E. F.," as the case may be) by a judgment (*or* order, *as the case may be*) of our said court made in the said action (*or* matter), and bearing date the day of , 19 , it was ordered that the said *C. D.* should (pay into court to the credit of the said action the sum of $, *or, as the case may be*). Know ye, therefore, that we, in confidence of your prudence and fidelity, have given, and by these presents do give to you, or any three or two of you, full power and authority to enter upon all the messuages, lands, tenements, and real estate whatsoever of the said *C. D.*, and to collect, receive, and sequester into your hands not only all the rents and profits of his said messuages, lands, tenements and real estate, but also all his goods, chattels, and personal estates whatsoever; and therefore we command you, any three or two of you, that you do at certain proper and convenient days and hours go to and enter upon all the messuages, lands, tenements and real estates of the said *C. D.*, and that you do collect, take and get into your hands not only the rents and profits of his said real estate, but also all his goods, chattels and personal estate, and detain and keep the same under sequestration in your hands until the said *C. D.* shall (pay into court to the credit of the said action the sum of $, *or, as the case may be*) clear his contempt, and our said court make other order to the contrary.

Issued at, etc.

No. 68.

DISTRINGAS AGAINST EX-SHERIFF.

[*Heading as in Form 1.*]

GEORGE THE FIFTH, by the grace of God, etc.

To the sheriff of , greeting:

We command you that you distrain , late sheriff of your judicial district aforesaid by all his land and chattels in your bailiwick, so that neither he nor any one by him do lay hands on the same until you shall have another command from us in that behalf, and that you answer to us for the issues of the same, so that the said expose for sale and sell or cause to be sold for the best price that can be gotten for the same, those goods and chattels which were of in your bailiwick, to the value of $,* the sum of $, which lately before us in our supreme court in a certain action wherein plaintiff and defendant , by a† of our said court bearing date the day of , was‡ to be paid by the said to the said , and of the sum of $, the amount at which the costs in the said‡ mentioned have been taxed and allowed, and of interest on the said sum of $ at the rate

*"the amount of," or "part of."

† "judgment" or "order."

‡ "adjudged" or "ordered."

of $5 per centum per annum from the day of , and on the said sum of $ at the same rate from the day of , which goods and chattels he lately took by virtue of our writ, and which remain in his hands for want of buyers, as the said late sheriff hath lately returned to us in our said court. And have the money arising from such sale before us in our said court immediately after the execution hereof, to be paid to the said . And have there then this writ.

Issued at, etc.

The writ was issued by, etc.

The defendant is a , and resides at , in your judicial district.

No. 69.

GARNISHEE SUMMONS (R. 505).

In the Supreme Court, Judicial District of .

Between , of , plaintiff, and , of , defendant, and , of , garnishee.

To the above named garnishee,

You are hereby notified that a suit has been entered in this court in which the plaintiff claims of the defendant the sum of as shown by his statement of claim filed in court a copy of which is hereto annexed (*or* You are hereby notified that the plaintiff has recovered a judgment in this court against the defendant for) and it is alleged on affidavit filed that you are indebted to the said defendant.

And you are required within ten days from the service hereof to appear at the local registrar's office and state in writing whether or not there is any debt due or accruing due from you to the defendant (*or* judgment debtor) and, if so, what debt and why you should not pay the same into court to the extent of the plaintiff's claim and costs.

Issued at this day of A.D. 19 ,

I. J.,

[L.S.] *Local Registrar.*

(*To be indorsed same as a Writ of Summons.*)

No. 70.

RECEIVER'S BOND (R. 538).

Know all men by these presents that I, , of , and we, , of , and , of (*fill in the names, addresses and occupations of the respective parties to the*

bond or the name and address of the society or company if a society or company is the surety) (hereinafter called the society *or* company) are jointly and severally held and firmly bound unto , the local registrar of the Supreme Court of Saskatchewan for the judicial district of (*fill in the name of the judicial district in which the action or proceeding is pending*) and his successors in office in the sum of $ of lawful money of Canada to be paid to the said (*local registrar*) for which payment we and each of us for himself, our and each of our heirs, executors and administrators [(*or in case a society or company is the surety*) for which payment well and truly to be made I the said (*name of the receiver*) for myself, my heirs, executors and administrators and every of them and we the society (*or* company for ourselves and our successors)] do bind and oblige ourselves firmly by these presents signed, sealed and delivered by the respective parties above named [(*or in case a society or company is the surety*) by the above named (*name of receiver*) and sealed with the seal of the society (*or* company) and signed by the president (*or* two of the directors thereof)].

Dated the day of in the year of our Lord one thousand nine hundred and .

Whereas by an order of the supreme court made by Mr. Justice (*if made in chambers insert* in chambers) in the action (*or* proceeding) (*fill in the title*) and dated the day of , 19 , it was ordered that the above named (*name of receiver*) should be appointed receiver of (*describe the property or estate following the words of the order*) and that he should give security to be approved of by the said local registrar and whereas the said local registrar has approved of (*naming the sureties*) as sureties for the said (*name of receiver*) and has also approved of the above bond with the underwritten conditions as a proper security to be entered into by the said receiver and the sureties pursuant to the said order as well in respect of the period for which the said has been appointed such receiver as aforesaid as also in respect of any extended or further period during which such receiver may be continued or appointed such receiver either under the said order or under any further order in the said action or proceeding and in testimony of such approval the said local registrar has signed an allowance in the margin hereof.*

Re ON 61* v. The local registrar named in this bond hath approved of and allowed the same. A.B., Local Registrar of the Supreme Court.

Now the conditions of the above written bond or obligation are such that if the above bounden his executors or administrators or some or one of them do and shall duly account for all sums of money or other property which the said (has received and) shall receive or (has or) shall become liable to pay or account for as such receiver as aforesaid including as well all sums of money or other property which the said shall receive or become liable to pay or account for in respect of the period for which the said has been appointed such receiver as aforesaid as also in respect of any appointment for any extended or further period during which

the said may be continued or appointed such receiver either under the said order or under any further order in the said action or proceeding at such period and in such manner as the court or a judge shall appoint and do and shall pay or deliver the same as the court or judge has directed or shall hereafter direct and shall give immediate notice to the court if the sureties or any of them shall become insolvent or go into liquidation then the above written bond or obligation shall be void otherwise the same shall subject to the provisions hereinafter contained be and remain in full force and virtue (*in case a society or company is surety insert the following*: Provided always that if the said shall not for every successive term of twelve calendar months to be computed from the day of within fifteen days after the day of in each and every year pay or cause to be paid at the office of the society (*or* company) the annual premium or sum of $ then the society (*or* company) shall at any time after such default in payment be at liberty to apply by notice at chambers to be relieved from all further liability as such sureties as aforesaid and such notice having been served upon such persons as the judge shall direct and being finally heard all further liability of the society (*or* company) as such sureties as aforesaid shall from and after the final hearing of such notice or from and after such other time as the judge shall direct, cease and determine save and except in respect of any loss or damage occasioned by any act or default of the said in relation to his duties as such receiver as aforesaid previously to such cesser and determination of liability) Provided always that a certificate or certificates under the hand of the said local registrar of the amount which the said as such receiver as aforesaid is liable to pay and has not paid shall be sufficient and conclusive evidence against the said , his heirs, executors and administrators and against the sureties and also as between the sureties and the said and (*the local registrar*) of the truth of the contents of the said certificate or certificates and that this bond has become forfeited thereby to the amount of the sum stated in such certificate or certificates and shall form a valid and binding charge and claim not only against the said , his heirs, executors and administrators but also against the sureties without its being necessary for the said and (*the local registrar*) or either of them or their or either of their executors or administrators first to take legal or other proceedings against the said , his heirs, executors or administrators for the recovery thereof and without any further or other proof being given either by or on the part of the said and (*the local registrar*) or either of them or their or either of their executors or administrators in any action, suit or proceeding to enforce this bond against the sureties or against the said (*receiver*), his heirs, executors or administrators or by or on the part of the sureties or either of them or their heirs, executors or administrators or the heirs, executors or administrators of

either of them (*in case a society or company is the surety* or their successors) in any action, suit or proceeding against the said , his heirs, executors or administrators of the amount of such damage or loss or that the same has been sustained, incurred or occasioned by and through the act or default of the said while in office.

Provided always and it is further agreed between the said and the sureties that the said shall and will on being discharged from his office or ceasing to act as such receiver as aforesaid forthwith give notice thereof in writing and also furnish to the sureties free of charge an office copy of the order of the court or judge discharging him from his office as such receiver as aforesaid. And further that he the said , his heirs, executors and administrators shall and will from time to time and at all times save, defend and keep harmless the society (*or* company) and their successors and the property and funds of the society (*or* company) from and against all loss and damage costs and expenses which the society (*or* company) or the funds or property thereof (*in case the sureties are not a society or company* the said sureties and each of them their and each of their heirs, executors and administrators from and against all loss and damage, costs and expenses which they or any of them) shall or may or otherwise might at any time sustain or be put unto for or by reason or in consequence of the sureties having entered into the above written bond for and at the request of the said .

Signed, sealed and delivered by the said in the presence of .

The seal of the (*name of the society or company*) was hereunto affixed in the presence of .

Signed for and on behalf of the (*name of the society or company*).

, directors.

, general manager.

(*Note.*—The affidavit verifying the execution of the bond by the society (*or* company) states the mode of execution to make the same binding on the society (*or* company). The execution by the receiver and sureties not being a society or company to be verified by affidavit.)

No. 71.

RECEIVER'S ACCOUNT (R. 541).

[*Heading as in Form 1.*]

The ( ) account of *A. B.*, the receiver appointed in this cause (*or*, pursuant to an order made in this cause, dated the day of), *to receive the rents and profits of the real estate, and to collect and get in the outstanding personal estate of C. D.*, the testator (*or*, intestate) in this cause named, from the day of , to the day of .

Real Estate—Receipts.

No. of Item	Date When Received	Tenant's Name	Description of Premises	Annual Rent	Arrears Due at	Amount Due at	Amount Received	Arrears Remaining Due	Observations
				$ c	$ c	$ c	$ c	$ c	
1		John Jones	South-west quarter of section thirty-four (34), township forty (40), range twenty-two (22), west of the second principal meridian.						
2		Thomas Jones	Lot fourteen (14), block three hundred and six (306), in the City of Regina.						

Payments and Allowances on Account of Real Estate.

No. of Item	Date of Payment or Allowance	Names of Persons to Whom Paid or Allowed	For What Purpose Paid or Allowed	Amount
1		Confederation Life Association	One year's insurance of, due . .	$
2		Thomas Carpenter	Bill for repairs at house let to Thomas Jones	
3		James Francis	Allowance for a half year's Supplementary Revenue Tax, due	
			Total Payment	$

RECEIPTS ON ACCOUNT OF PERSONAL ESTATE.

No. of Item	Date When Received	Names of Persons from Whom Received	On What Account Received	Amount Received		

PAYMENTS AND ALLOWANCES ON ACCOUNT OF PERSONAL ESTATE.

No. of Item	Date When Paid or Allowed	Names of Persons to Whom Paid or Allowed	For What Purpose Paid or Allowed	Amount Paid or Allowed		

SUMMARY.

Amount of balance due from receiver on account of real estate on last account	$	$
Amount of receipts on the above account of real estate		
Balance of last account paid into court	$	
Amount of payments and allowances on the above account of real estate		
Amount of receiver's costs of passing this account as to real estate		
Balance due from the receiver on account of real estate		$
Amount of balance due from receiver on last account of personal estate	$	
Amount of receipts on the above account of personal estate		
Balance of last account paid into court	$	
Amount of payments and allowances on the above account of personal estate		
Amount of receiver's costs of passing this account as to personal estate		
Balance due from the receiver on account of personal estate		$

No. 72.

AFFIDAVIT VERIFYING RECEIVER'S ACCOUNT (R. 541).

In the Supreme Court. Mr. Justice .

(*Title.*)

I, , of , the receiver appointed in this cause, make oath and say as follows:

1. The account marked with the letter A, produced and shown to me at the time of swearing this my affidavit, and purporting to be my account of *the* (*a*) *rents and profits of the real estate and of the outstanding personal estate of* , the testator (*or* intestate) in this cause, from the day of , 19 , to the day of , 19 , both inclusive, contains a true account of all and every sum of money received by me or by any other person or persons by my order or to my knowledge or belief, for my use on account, or in respect of the *said rents and profits accrued due on or before the said day of or on account or in respect of the said personal estate,* except what is included as received in my former account (*or* accounts) sworn by me.

2. The several sums of money mentioned in the said account, hereby verified to have been paid and allowed, have been actually and truly so paid and allowed for the several purposes in the said account mentioned.

3. The said account is just and true in all and every the items and particulars therein contained, according to the best of my knowledge and belief.

4. *W. X.* and *Y. Z.,* the sureties named in the recognisance dated the of , 19 , are both alive, and neither of them has become bankrupt or insolvent.

(*Note.*—If the receiver's security was by way of bond of a guarantee society substitute for paragraph 4 the following: "To the best of my knowledge, information and belief the (*name of society*), the sureties named in the bond dated the 19 , are not insolvent or in liquidation.")

(*a*) This ought to accord with the language of the order appointing the receiver.

No. 73.

WRIT OF ATTACHMENT (R. 545).

In the Supreme Court, Judicial District of .

Between , of , plaintiff, and , of , defendant.

GEORGE THE FIFTH (*or the name of the reigning Sovereign as the case may be*) by the grace of God of the United Kingdom of Great Britain and Ireland, and of the British Dominions Beyond the Seas, KING, Defender of the Faith, etc.

To the sheriff of the Judicial District:

You are commanded to attach, seize and safely keep all the personal estate, credits and effects together with all evidences of title, debts, books and book accounts or other documents, vouchers or papers belonging thereto or otherwise of the above named defendant to secure and satisfy the plaintiff the sum of with his costs of action and to satisfy the debt and demand of such other creditors of the said defendant as shall prosecute their claims to judgment and lodge executions with you the said sheriff within the time allowed by *The Creditors' Relief Act* to entitle them to share in the distribution of the proceeds.

And we command you the said sheriff that so soon as you shall have executed this writ you do return the same with an affidavit of service and a certificate of your action thereunder.

Issued at this day of A.D. 19 .

[L.S.] *I. J.,*
Local Registrar.

No. 74.

WRIT OF REPLEVIN (R. 554).

In the Supreme Court, Judicial District of .

Between , of , plaintiff, and , of , defendant.

GEORGE THE FIFTH (*or the name of the reigning Sovereign as the case may be*) by the grace of God of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, KING, (*or as the case may be*) Defender of the Faith, etc.

To the sheriff of the Judicial district:

You are hereby commanded without delay to cause to be replevied to the plaintiff his goods, chattels and personal property following that is to say: which the said alleges to be of the value of dollars and which the defendant hath taken and unjustly detained (*or* unjustly detains *as the case may be*) as it is alleged, in order that the plaintiff may have his just remedy in that behalf.

Issued at this day of , A.D. 19 .

G. H.,
[L.S.] *Local Registrar.*

No. 75.

BOND FOR REPLEVIN (R. 556).

[*Heading as in Form 1.*]

Know all men by these presents that we, *A. B.*, of *E. F.*, of and *G. H.*, of are jointly and severally held and firmly bound to the sheriff of the judicial

Geo Dodds-

district in the sum of dollars of lawful money to be paid to the said sheriff, his successor in office or either of their assigns for which payment well and truly to be made we bind ourselves and each and every of us in the whole, our and every of our heirs, executors and administrators firmly by these presents. Sealed with our seals, dated this day of one thousand .

Whereas the said *A. B.* has obtained a writ of replevin against *C. D.* to obtain possession of certain cattle (*or* goods) to wit: which the said *A. B.* asserts to be his property;

Now the condition of this obligation is such that if the said *A. B.* shall prosecute his suit in which the said writ is issued with effect and without delay or if suit is carried on and continued between the said *A. B.* and *C. D.* touching the property of the said cattle (*or* goods) and the court shall adjudge that the said cattle (*or* goods) be restored to the said *C. D.* with damages for detaining the same and during such detention then if the said *A. B.* shall comply with such adjudication and pay and satisfy any judgment that may be obtained against him this bond shall be void.

Signed, sealed and delivered in the presence of

A. B. [L.S.]
E. F. [L.S.]
G. H. [L.S.]

(*When the plaintiff himself does not join in the bond the form must be altered to conform to the facts.*)

No. 76.

BOND TO RETAIN POSSESSION OF PROPERTY (R. 557).

[*Heading as in Form 1.*]

Know all men by these presents that we, *C. D.* (defendant) of , *E. F.* of and *G. H.* of are jointly and severally held and firmly bound to the sheriff of the judicial district in the sum of dollars of lawful money to be paid to the said sheriff, his successor in office, or either of their assigns, for which payment well and truly to be made we bind ourselves, and each and every of us in the whole, our and every of our heirs, executors and administrators, firmly by these presents.

Sealed with our seals, dated this day of one thousand nine hundred and .

Whereas the said *C. D.* claims to retain certain cattle (*or* goods) to wit: , to recover possession of which *A. B.* has obtained a writ of replevin.

Now the condition of this obligation is such that if the court shall adjudge that the said cattle (*or* goods) shall be restored to the said *A. B.*, with or without damages for detaining the

same, then if the said *C. D.* shall restore the said cattle (*or* goods) and pay and satisfy any judgment that may be recovered against him, this obligation shall be void, but otherwise shall remain in force.

Signed, sealed and delivered in the presence of } *C. D.* [L.S.] *E. F.* [L.S.] *G. H.* [L.S.]

(*Where the defendant himself does not join in the bond, the form must be altered to conform to the fact.*)

No. 77.

NOTICE OF CLAIM TO GOODS TAKEN IN EXECUTION (R. 560).

[*Heading as in Form 1.*]

Take notice that *A. B.* has claimed the goods (*or* certain goods) (*where only certain goods are claimed here enumerate them*) taken in execution by the sheriff of , under the warrant of execution issued in this action. You are hereby required to admit or dispute the title of the said *A. B.* to the said goods and give notice thereof in writing to the said sheriff within four days from the receipt of this notice, failing which the said sheriff may interplead. If you admit the title of the said *A. B.* to the said goods and give notice thereof in manner aforesaid to the said sheriff you will only be liable for any fees and expenses incurred prior to the receipt of the notice admitting the claim.

Dated, etc.

(Signed)

To the plaintiff. Sheriff of .

No. 78.

NOTICE OF PLAINTIFF OF ADMISSION OR DISPUTE OF TITLE OF CLAIMANT (R. 560).

[*Heading as in Form 1.*]

Take notice that I admit (*or* dispute) the title of *A. B.* to the goods [*or,* to certain of the goods, namely (*set them out*)] seized by you under the execution issued under the judgment in this action.

(Signed) *Plaintiff or Solicitor.*

To the sheriff of , and his officers.

No. 79.

GENERAL FORM OF ORIGINATING SUMMONS (R. 601).

19 . (*Here put the letter and number.*)

In the Supreme Court, Judicial District of .

If the question to be determined arises in the administration of an estate or a trust entitle it also in the matter of the estate or trust.

Between *A. B.*, plaintiff, and *C. D.*, defendant.

Let *C. D.* of in the of within twenty days after service of this summons on him, inclusive of the day of such service, cause an appearance to be entered for him to this summons, which is issued upon the application of of in the of who claims that (*here set out the object of the application*).

If you do not enter appearance within the time and at the place above mentioned, such order will be made and proceedings taken as may seem just and expedient.

Dated the .

.....

Local Registrar.

This summons was taken out by , solicitor for the above-named .

The defendant may appear hereto by entering appearance either personally or by solicitor at the court house.

No. 80.

ORIGINATING SUMMONS (R. 601).

In the Supreme Court of Saskatchewan, Judicial District of .

(*Here insert style of cause or matter.*)

Let all parties concerned attend at judge's chambers at in on , the day of , on the hearing of an application on the part of that (*here set out the object of the application*).

If you do not attend either in person or by your solicitor at the time and place above mentioned such order will be made in your absence as may seem just and expedient.

K. L.,

(*Seal of Court.*) J. S. C.

This summons was taken out by , solicitor for the applicant.

No. 81.

NOTICE OF APPOINTMENT TO HEAR ORIGINATING SUMMONS (R. 605).

[*Title, etc., as in Forms No. 79 or 80.*]

To (*insert the name of the defendant or respondent*).

Take notice that you are required to attend the judge (*or* local master) in chambers at the court house at on the day of , 19 , and that if you do not attend in person or by solicitor at the time and place mentioned, such order will be made and proceedings taken as the judge (*or* local master) may think just and expedient.

(Signed)

Solicitor for the Plaintiff (*or* Applicant).

No. 82.

NOTICE OF MOTION (R. 614).

[*Heading as in Form 1.*]

Take notice that the court (*or* judge in chambers) will be moved on day, the day of , 19 , at o'clock in the forenoon, or so soon thereafter as counsel can be heard by , that .

Dated the day of , 19 .

(Signed)

Solicitor for the .

No. 83.

ORDER—GENERAL FORM (R. 622).

[*Heading as in Form 1.*]

Judge (*or* master) (*insert name of judge or master*) in Chambers.

Between .

Upon hearing , and upon reading .

It is ordered , and that the costs of this application be .

No. 84.

ORDER FOR TIME (R. 622).

[*Heading as in Form 1.*]

Upon hearing and upon reading the affidavit of , filed the day of , 19 , and .

It is ordered that the shall have time, and that the costs of this application be .

Dated the day of , 19 .

No. 85.

ORDER UNDER RULE 135.

[*Heading as in Form 1.*]

Upon hearing and upon reading the affidavit of filed the day of , 19 , and .

It is ordered that the appearance be struck out and that the plaintiff may sign final judgment in this action for the amount claimed, with interest, if any, and costs to be taxed (and that the costs of this application be).

Dated the day of , 19 .

No. 86.

ORDER UNDER RULE 137.

[*Heading as in Form 1.*]

Upon hearing and upon reading the affidavit of , filed the day of , 19 , and .

It is ordered that if the defendant pay into court within a week from the date of this order the sum of $, he be at liberty to defend this action (by delivering a defence within days after service of this order), but that if that sum be not so paid, the plaintiff be at liberty to sign final judgment for the amount claimed, with interest, if any, and costs, and that in either event the costs of this application be .

Dated the day of , 19 .

No. 87.

ORDER UNDER RULE 138.

[*Heading as in Form 1.*]

Upon hearing and upon reading the affidavit of , filed the day of , 19 , and .

It is ordered that if the defendant pay into court within a week from the date of this order the sum of $ he be at liberty to defend this action as to the whole of the plaintiff's claim.

And it is ordered that if that sum be not so paid, the plaintiff be at liberty to sign judgment for that sum, and the defendant be at liberty to defend this action as to the residue of the plaintiff's claim (and it is ordered that in either event the defence be delivered within days after service of this order) and that the costs of this application be .

Dated the day of , 19 .

No. 88.

ORDER UNDER RULE 139.

[*Heading as in Form 1.*]

Upon hearing and upon reading the affidavit of , filed the day of , 19 , and .

It is ordered that if the defendant do not pay to the plaintiff's solicitor within a week from the date of this order, the sum of $, the plaintiff be at liberty to sign judgment for the same.

And is it further ordered that the said defendant be at liberty to defend this action as to the residue of the plaintiff's claim, and that the costs of this application be costs in the action.

Dated the day of , 19 .

No. 89.

ORDER TO AMEND (R. 253).

[*Heading as in Form 1.*]

Upon hearing and upon reading the affidavit of , filed the day of , 19 , and .

It is ordered that the plaintiff be at liberty to amend the writ of summons in this action by , and that the costs of this application be .

Dated the day of 19 .

No. 90.

ORDER FOR PARTICULARS (PARTNERSHIP) (R. 51).

[*Heading as in Form 1.*]

Upon hearing and upon reading the affidavit of , filed the day of , 19 , and .

It is ordered that the furnish the with a statement in writing, verified by affidavit, setting forth the names of the persons constituting the members or copartners of their firm, pursuant to the rule 51 and that the costs of this application be .

Dated the day of , 19 .

No. 91.

ORDER FOR PARTICULARS (GENERAL) (R. 149).

[*Heading as in Form 1.*]

Upon hearing and upon reading the affidavit of , filed the day of , 19 , and .

It is ordered that the plaintiff deliver to the defendant an account in writing of the particulars of the plaintiff's claim in this action, and that unless such particulars be delivered within days from the date of this order, all further proceedings be stayed until the delivery thereof, and that the costs of the application be .

Dated the day of 19 .

No. 92.

ORDER FOR PARTICULARS OF COUNTERCLAIM (R. 149).

[*Heading as in Form 1.*]

Upon hearing and upon reading the affidavit of , filed the day of , 19 , and .

It is ordered that the defendant do within days deliver to the plaintiff's solicitor or agent particulars of the said defendant's setoff (*counterclaim*) that in default the said defendant be precluded from giving evidence in support thereof on the trial of this action, and that the costs of this application be .

Dated the day of , 19 .

No. 93.

ORDER FOR PARTICULARS (ACCIDENT CASE) (R. 149).

[*Heading as in Form 1.*]

Upon hearing and upon reading the affidavit of , filed the day of , 19 , and .

It is ordered that the plaintiff deliver to the defendant an account in writing of the particulars of the injuries mentioned in the statement of claim, together with the time and place of the accident, and the particular acts of negligence complained of, and that unless such particulars be delivered within days from the date of this order all further proceedings in this action be stayed until the delivery thereof, and that the costs of this application be .

Dated the day of , 19 .

No. 94.

ORDER TO DISCHARGE OR VARY ON APPLICATION BY THIRD PARTY (*Or* VI, Pt. VI).

[*Heading as in Form 1.*]

Upon hearing and upon reading the affidavit of , filed the day of , 19 , and .

It is ordered that the order of in this action, dated the day of , 19 , be discharged (*or* varied by), and that the costs of this application be .

Dated the day of , 19 .

No. 95.

ORDER TO DISMISS FOR WANT OF PROSECUTION (R. 237).

[*Heading as in Form 1.*]

Upon hearing and upon reading the affidavit of , filed the day of , 19 , and .

It is ordered that this action be, for want of prosecution, dismissed with costs to be taxed and paid to the defendant by the plaintiff, and that the costs of this application be .

Dated the day of , 19 .

No. 96.

ORDER FOR AFFIDAVIT AS TO DOCUMENTS (R. 268).

[*Heading as in Form 1.*]

Upon hearing

It is ordered that the do, within days from the date of this order, answer on affidavit stating what documents are or have been in possession or power relating to the matters in question in this action, and that the costs of this application be .

Dated the day of , 19 .

No. 97.

ORDER TO PRODUCE DOCUMENTS FOR INSPECTION (R. 272).

[*Heading as in Form 1.*]

Upon hearing and upon reading the affidavit of , filed the day of , 19 , and .

It is ordered that the do, at all seasonable times, on reasonable notice, produce at (*insert place of inspection*), situate at , the following documents, namely , and that the be at liberty to inspect and peruse the documents so produced, and to take copies and abstracts thereof and extracts therefrom, at expense, and that in the meantime all further proceedings be stayed, and that the costs of this application be .

Dated the day of 19 .

No. 98.

ORDER FOR SERVICE OUT OF JURISDICTION (R. 23).

In the Supreme Court, Judicial District of .

The Hon. Mr. Justice , Judge in Chambers.

In the matter of The Judicature Act, and in the matter of an intended action.

Between , plaintiff, and , defendant.

Upon (hearing.....and upon) reading the affidavit of , filed herein,

It is ordered that the intended plaintiff be at liberty to issue a writ of summons for service out of the jurisdiction against the intended defendant.

And it is further ordered that the said intended plaintiff be at liberty to serve the said writ at (*Here insert country or place within the limits of which the service is to be made*), or elsewhere in the , and that the time for appearance to the said writ by the said intended defendant be within after the service (thereof) of the said writ.

Dated the day of , 19 .

No. 99.

ORDER FOR SUBSTITUTED SERVICE (R. 19).

[*Heading as in Form 1.*]

Upon hearing and upon reading the affidavit of , filed the day of , 19 , and .

It is ordered that service of a copy of this order, and of a copy of the writ of summons in this action, by sending the same by a prepaid post letter, addressed to the defendant , at , shall be good and sufficient service of the writ.

Dated the day of , 19 .

No. 100.

ORDER FOR RENEWAL OF WRIT (R. 9).

[*Heading as in Form 1.*]

Upon hearing and upon reading the affidavit of , filed the day of , 19 , and .

It is ordered that the writ in this action be renewed for six months from the date of its renewal, pursuant to the Rules of the Supreme Court, Rule 9.

Dated the day of , 19 .

No. 101.

ORDER FOR ISSUE OF NOTICE CLAIMING CONTRIBUTION (R. 74).

[*Heading as in Form 1.*]

Upon hearing and upon reading the affidavit of , filed the day of , 19 , and .

It is ordered that the defendant be at liberty to issue a notice claiming over against , pursuant to the Rules of the Supreme Court, Rule 74.

Dated the day of , 19 .

No. 102.

ORDER OF REFERENCE (R. 622).

[*Heading as in Form 1.*]

Upon hearing and by consent

It is ordered as follows:

1. (*State matters to be referred*) shall be referred to the award of .

2. The arbitrator shall have all the powers as to certifying and amending of a Judge of the Supreme Court.

3. The arbitrator shall make and publish his award in writing of and concerning the matters referred, ready to be delivered to the parties in difference, or such of them as require the same (*or* their respective personal representatives, if either of the said parties die before the making of the award), on or before the next, or on or before such further day as the arbitrator may from time to time appoint and signify in writing signed by him and indorsed on this order.

4. The said parties shall in all things abide by and obey the award so to be made.

5. The costs of the said cause and the costs of the reference and award shall be .

6. The arbitrator may (if he think fit) examine the said parties to this cause, and their respective witnesses, upon oath or affirmation.

7. The said parties shall produce before the arbitrator all books, deeds, papers, and writings in their or either of their custody or power relating to the matters in difference.

8. Neither the plaintiff nor the defendant shall bring or prosecute any action against the arbitrator of or concerning the matters so to be referred.

9. If either party by affected delay or otherwise wilfully prevent the said arbitrator from making an award, he or they shall pay such costs to the other as may think reasonable and just.

10. In the event of either of the said parties disputing the validity of the said award, or moving the to set it aside, the said shall have power to remit the matters hereby referred or any or either of them to the reconsideration of the arbitrator.

11. In the event of the arbitrator declining to act or dying before he has made his award, the said parties may, or, if they cannot agree, the may, on application by either side, appoint a new arbitrator.

12. Unless restrained by any order of the court or a judge, the party or parties in whose favour the award shall be made shall be at liberty days after service of a copy of the award on the solicitor or agent of the other party to sign final judgment in accordance with the award, and for all costs that he or they may be entitled to under this order, and under the award, together with the costs of the said judgment.

Dated the day of , 19 .

No. 103.

ORDER FOR EXAMINATION OF WITNESSES AND PRODUCTION OF DOCUMENTS (R. 622).

[*Heading as in Form 1.*]

Upon hearing and upon reading the affidavit of filed the day of , 19 , and .

It is ordered that attend before , the arbitrator herein, on the days of 19 , at , and then and there submit to be examined on oath or affirmation on behalf of the , touching the matters referred to the said arbitrator.

And it is further ordered that the said do at the time and place aforesaid produce and deliver to the said arbitrator the papers, documents, and writings hereafter mentioned, that is to say (*specify documents to be produced*).

Dated the day of , 19 .

No. 104.

ORDER TO REMOVE JUDGMENT FROM DISTRICT COURT (R. 622).

19 . (*Here put the letter and number.*)

In the Supreme Court.

Local master in Chambers (*or* judge *as the case may be*),

In the matter of a plaint in the district court of , holden at , wherein , plaintiff, and , defendant.

Upon reading the affidavit of , filed the day of , 19 , and , and the certified copy of the judgment in the plaint above mentioned.

It is ordered that a writ of certiorari issue to remove the said judgment from the above named district court into the supreme court.

Dated the day of , 19 .

No. 105.

ORDER OF REFERENCE TO LOCAL MASTER (R. 335).

[*Heading as in Form 1.*]

Upon hearing and upon reading the affidavit of , filed the day of , 19 , and .

It is ordered that this action (*or* the matters of account in this action, *or* the following questions in this action being matters of account, namely, *stating them*) be referred to the local master at , with all the powers as to certifying and amending of a judge of the supreme court and that the costs of the and of the reference be in the discretion of the local master, and that the costs of this application be .

Dated the day of , 19 .

No. 106.

ORDER FOR EXAMINATION OF WITNESSES BEFORE TRIAL (R. 365).

[*Heading as in Form 1.*]

Upon hearing the solicitors on both sides, and upon reading the affidavit of , filed herein (the day of , 19 , and) .

It is ordered that a witness on behalf of the be examined *viva voce* (*on oath or affirmation*) before the local registrar or before a local master (*or* before , esquire,

special examiner), the solicitor or agent giving to the solicitor or agent notice in writing of the time and place where the examination is to take place.

And it is further ordered that the examination so taken be filed in the local registrar's office of the supreme court at , and that an office copy or copies thereof may be read and given in evidence on the trial of this cause, saving all just exceptions, without any further proof of the absence of the said witness than the affidavit of the solicitor or agent of the party using the same, as to his belief, and that the costs of this application be costs in the action.

Dated the day of , 19 .

No. 107.

GARNISHEE ORDER (R. 508).

19 . (*Here put the letter and number.*)

In the Supreme Court, in Chambers.

Between , (*judgment creditor*) or plaintiff (*as the case may be*) and , (*judgment debtor*) or defendant (*as the case may be*), garnishee.

Upon hearing the solicitors for the judgment creditor and the garnishee, and upon reading the affidavit of , filed the day of , 19 , and the garnishee summons made herein, dated the day of , 19 , whereby it was ordered that all debts owing or accruing due from the above-named garnishee to the above-named judgment debtor should be attached to answer a judgment recovered against the said judgment debtor by the above-named judgment creditor in the supreme court on the day of , 19 , for the sum of , on which judgment the said sum of $ remained due and unpaid.

It is ordered that the said garnishee do forthwith pay the said judgment creditor , the debt due from him to the said judgment debtor (*or* so much thereof as may be sufficient to satisfy the judgment debt), and that in default thereof execution may issue for the same (and that the costs of this application be).

Dated the day of , 19 .

No. 108.

ORDER FOR ISSUE BETWEEN JUDGMENT CREDITOR AND GARNISHEE (R. 512).

[*Heading as in No. 107.*]

Upon hearing the solicitors for the judgment creditor (*or plaintiff, as the case may be*) and the garnishee, and reading the affidavit of , and the garnishee summons herein, dated the day of , 19 .

It is ordered that the judgment creditor (*or plaintiff, as the case may be*) and the garnishee proceed to the trial of an issue wherein the said judgment creditor shall be plaintiff and the said garnishee shall be defendant, and that the question to be tried shall be whether the said garnishee was indebted to the judgment debtor in any and what amount at the time the said garnishee summons was served. And it is further ordered that the issue be prepared and delivered by the plaintiff therein within ten days from this date and be returned by the defendant therein within seven days and be tried at , and that the question of costs and all further questions be reserved until the trial of the said issue.

Dated the day of , 19 .

No. 109.

ORDER TO DELIVER BILL OF COSTS (R. 622).

19 , , No.

In the Supreme Court, local master (*or* judge) in Chambers.

In the matter of , gentlem , of the solicitors of the supreme court.

Upon hearing the solicitors for and for , and upon reading the affidavit of , filed this day of , 19 .

It is ordered that the said do within seven days deliver to the said , or to his solicitor, a bill of costs in all causes and matters wherein he has been concerned for the said , and that he give credit therein for all moneys received by him from or on account of the said .

Dated this day of , 19 .

No. 110.

ORDER ON CLIENT'S APPLICATION TO TAX SOLICITOR'S BILL OF COSTS (R. 737).

In the Supreme Court, in Chambers.

In the matter of the taxation of costs, and in the matter of , gentleman, one of the solicitors of the supreme court.

Upon hearing, etc.

It is ordered that the bill of fees, charges, and disbursements delivered to the applicant by the above-named solicitor be referred to the taxing officer to be taxed, and that the said solicitor give credit for all sums of money by him received of or on account of the applicant, and that he refund what (if anything) he may on such taxation appear to have been overpaid.

And it is further ordered that (*if the said solicitor attends on the taxation*) the taxing officer tax the costs of the reference, and certify what shall be found due to or from either party in respect of the bill and demand and of the costs of the reference, to be charged (if payable) according to the event of the taxation, pursuant to the statute.

And it is further ordered that the said solicitor do not commence or prosecute any cause or matter touching the demand pending the reference.

And it is further ordered that upon payment by the applicant of what (if anything) may appear to be due to the said solicitor the said solicitor do (if required) deliver up to the applicant, or as he may direct, all deeds, books, papers, and writings in the said solicitor's possession, custody, or power, belonging to the applicant.

Dated the day of , 19 .

No. 111.

ORDER ON SOLICITOR'S APPLICATION TO TAX BILL OF COSTS (R. 737).

In the Supreme Court, in Chambers.

In the matter of the taxation of costs, and in the matter of , gentleman, one of the solicitors of the supreme court.

Upon hearing and upon reading the affidavit of , filed the day of , 19 .

It is ordered that the above-named solicitor's bill of fees, charges and disbursements, delivered to (hereinafter called the said client) be referred to the taxing officer to be taxed, and that the said solicitor give credit for all sums of money by him received from or on account of the said client, and that he refund what (if anything) he may on such taxation appear to have been overpaid.

And it is further ordered that if the said client shall attend upon such taxation the taxing officer tax the costs of the reference and certify what shall be found due to or from either party in respect of the bill and demand and of the costs of the reference to be paid according to the event of the taxation pursuant to the statute.

And it is further ordered that the said solicitor do not commence or prosecute any cause or matter touching the demand pending the reference.

And it is further ordered that upon payment by the said client of what (if anything) may appear to be due to the said solicitor the said solicitor do (if required) deliver to the said client, or as he may direct, all deeds, books, papers, and writings in the said solicitor's possession, custody, or power, belonging to the said client.

Dated the day of , 19 .

No. 112.

ORDER TO TAX AFTER ACTION BROUGHT (R. 737).

[*Heading as in Form 1.*]

Upon hearing and upon reading the affidavit of , filed the day of , 19 .

It is ordered that the plaintiff's bill of costs, charges, and disbursements delivered to the defendant, for the recovery of which this action is brought, be referred to the taxing officer to be taxed, and that the plaintiff give credit at the time of taxation for all sums of money by him received from or on account of the defendant.

And it is further ordered that the taxing officer tax the costs of the reference, and certify what upon such reference shall be found due to or from either party in respect of the bill and demand, and of the costs of the reference, pursuant to the statute.

And it is further ordered that the plaintiff do not prosecute this action touching the demand, pending the reference.

And it is further ordered that upon payment of what (if anything) may appear to be due to the plaintiff, together with the costs of this action (which are to be also taxed and paid), all further proceedings therein be stayed, and that the costs of this application be .

Dated the day of , 19 .

No. 113.

ORDER TO TRY ACTION IN DISTRICT COURT (R. 622).

[*Heading as in Form 1.*]

Upon hearing and upon reading the affidavit of , filed the day of , 19 , and

It is ordered that this action be tried before the district court of , holden at , and that the costs of this application be .

Dated the day of , 19 .

No. 114.

ORDER FOR EXAMINATION TOUCHING MEANS (R. 501).

19 . (*Here put the letter and number.*)

In the Supreme Court, Judicial District of .

Local master (*or* judge) in Chambers.

Between , judgment creditor, and , judgment debtor.

Upon hearing the solicitor for the judgment creditor and the judgment debtor.

It is ordered that the above-named judgment debtor attend before (*local registrar* or *master*) of the supreme court at such time and place as such (*local registrar* or *master*) may appoint, and be orally examined as to whether any and what debts are owing to him and whether he has any and what other property or means of satisfying the judgment signed herein; and that the said judgment debtor produce any books or other documents in his possession or power relating to the same before the said (*local registrar* or *master*) at the time of the examination.

Dated, etc.

No. 115.

INTERPLEADER ORDER (R. 571).

19 . (*Here put the letter and number.*)

In the Supreme Court, in Chambers.

Between , plaintiff, and , defendant , and , claimant, and , respondent.

Upon hearing and upon reading the affidavit of , filed the day of , 19 , and .

It is ordered that the claimant be barred, that no action be brought against the above-named (*sheriff*), and that the costs of this application be .

Dated the day of , 19 .

No. 116.

INTERPLEADER ORDER (R. 569).

19 , , No.

In the Supreme Court, in Chambers.

Between , plaintiff, and , defendant, , claimant.

Upon hearing the solicitors for the plaintiff, the claimant, and the sheriff of , and reading the affidavit of ,

It is ordered that the sheriff withdraw from possession of the goods seized by him under the writ of *fieri facias* herein and claimed by the claimant, that no action be brought, .

And that the pay to the the costs of the interpleader to be taxed, and possession money to the sheriff.

Dated the day of , 19 .

No. 117.

INTERPLEADER ORDER (R. 568).

19 . (*Here put the letter and number.*)

In the Supreme Court, in Chambers.

Between , plaintiff, and , defendant, and , claimant.

Upon hearing and upon reading the affidavit of , filed the day of , 19 , and .

It is ordered that the above-named claimant be substituted as defendant in this action in lieu of the present defendant, and that the costs of this application be . .

Dated the day of , 19 .

No. 118.

INTERPLEADER ORDER (R. 569).

19 . (*Here put the letter and number.*)

In the Supreme Court, in Chambers.

Between , plaintiff, and , defendant, and

Between , claimant, and the said , execution creditor, and , the sheriff of , respondents.

Upon hearing and upon reading the affidavit of , filed the day of , 19 , and .

It is ordered that the said sheriff proceed to sell the goods seized by him under the writ of *fieri facias* issued herein and claimed by the claimant, and pay the net proceeds of the sale, after deducting the expenses thereof, into court in this cause, to abide further order herein.

And it is further ordered that the parties proceed to the trial of an issue in the supreme court, in which the said claimant shall be the plaintiff and the said execution creditor shall be the defendant, and that the question to be tried shall be whether at the time of the seizure by the sheriff the said goods seized were the property of the claimant as against the execution creditor.

And it is further ordered that this issue be prepared and delivered by the plaintiff therein within from this date, and be returned by the defendant therein within days, and be tried at .

And it is further ordered that the question of costs and all further questions be reserved until the trial of the said issue, and that no action shall be brought against the said sheriff for the seizure of the said goods.

Dated the day of , 19 .

No. 119.

INTERPLEADER ORDER (R. 569).

[*Heading as in Form 118.*]

Upon hearing, etc.

It is ordered that upon payment of the sum of $ into court by the said claimant within from this date, or upon his giving within the same time security to the satisfaction of the master (*or as the case may be*) for the payment of the same amount by the said claimant according to the directions of any order to be made herein, and upon payment to the above-named sheriff of the possession-money from this date, the said sheriff do withdraw from the possession of the goods seized by him under the writ of *fieri facias* herein and claimed by the claimant.

And it is further ordered that unless such payment be made or security given within the time aforesaid the said sheriff proceed to sell the said goods, and pay the proceeds of the sale, after deducting the expenses thereof and the possession-money from this date, into court in the cause, to abide further order herein.

And it is further ordered that the parties proceed, etc.

And it is further ordered that this issue, etc.

And it is further ordered that the question of costs, etc.

Dated the day of , 19 .

No. 120.

INTERPLEADER ORDER (R. 569).

[*Heading as in Form 118.*]

Upon hearing, etc.

It is ordered that upon payment of the sum of $ into court by the said claimant, or upon his giving security to the satisfaction of the local registrar (*or as the case may be*) for the payment of the same amount by the claimant according to the directions of any order to be made herein, the above-named sheriff withdraw from the possession of the goods seized by him under the writ of *fieri facias* issued herein.

And it is further ordered that in the meantime, and until such payment made or security given, the sheriff continue in possession of the goods, and the claimant pay possession-money for the time he so continues, unless the claimant desire the goods to be sold by the sheriff, in which case the sheriff is to sell them and pay the proceeds of the sale, after deducting the expenses thereof and the possession-money from this date, into court in the cause, to abide further order herein.

And it is further ordered that the parties proceed, etc.

And it is further ordered that this issue, etc.

And it is further ordered that the question of costs, etc.

Dated the day of , 19 .

No. 121.

INTERPLEADER ORDER (R. 569).

[*Heading as in Form 118.*]

The claimant and the execution creditor having requested and consented that the merits of the claim made by the claimant be disposed of and determined in a summary manner, now upon hearing , and upon reading the affidavit of , filed the day of , 19 , and .

It is ordered that .

And that the costs of this application be .

Dated the day of , 19 .

No. 122.

INTERPLEADER ORDER (R. 569).

[*Heading as in Form 118.*]

Upon hearing and upon reading the affidavit of , filed the day of , 19 , and .

It is ordered that the above-named sheriff proceed to sell enough of the goods seized under the writ of *fieri facias* issued in this action to satisfy the expenses of the said sale, the rent (if any) due, the claim of the claimant, and this execution.

And it is further ordered that out of the proceeds of the said sale (after deducting the expenses thereof and rent, if any), the said sheriff pay to the claimant the amount of his said claim, and to the execution creditor the amount of his execution, and the residue, if any, to the defendant.

And it is further ordered that no action be brought against the said sheriff, and that the costs of this application be .

Dated the day of , 19 .

No. 123.

INTERPLEADER ORDER (R. 569).

[*Heading as in Form 118.*]

Upon hearing the solicitors for the plaintiff, the claimant, and the sheriff of , and upon reading the affidavit of .

It is ordered that upon payment of the sum of $ and possession money from the date of this order to the said sheriff by the said claimant within seven days from this date the said

sheriff do withdraw from the possession of the goods seized by him under the writ of *fieri facias* herein and claimed by the claimant.

And it is further ordered that unless such payment be made within the time aforesaid the said sheriff proceed to sell the said goods and retain the proceeds of the sale, after deducting the expenses thereof and the possession money from this date.

And it is further ordered that the said sum of $, or the proceeds of the said sale (*as the case may be*) do abide the order of the judge of the district court to whom the interpleader proceedings herein are hereinafter ordered to be transferred.

And it is further ordered that the interpleader proceedings herein be transferred to the district court of , holden at .

And it is further ordered that the costs of this application be costs in the interpleader proceedings, and that no action be brought against the said sheriff for the seizure of the said goods.

Dated the day of , 19 .

No. 124.

ORDER DISMISSING MOTION GENERALLY (R. 589).

[*Heading as in Form 1.*]

Upon hearing and upon reading the affidavit of , filed the day of , 19 , and .

It is ordered that the application of be dismissed with costs to be taxed and paid by the to the (*or,* and that the costs of and occasioned by this application be the 's in any event).

Dated the day of , 19 .

No. 125.

ORDER TO BRING UP WITNESS IN CRIMINAL CUSTODY (R. 622).

[*Heading as in Form 1.*]

Upon reading the affidavit of .

It is ordered that the keeper of his Majesty's prison at shall have before , on the day of , 19 , at o'clock in the forenoon, the body of , a prisoner in his custody (as it is said), then and there to testify the truth and give evidence in this , on behalf of , and so on from day to day until his attendance as such witness shall be no longer required, and thereupon he be taken back without delay to the said prison and there detained until he be discharged by due course of law.

Dated the day of , 19 .

No. 126.

RECEIVER ORDER INTERIM (R. 538).

[*Heading as in Form 1.*]

Upon the application of for the plaintiff and the plaintiff by his undertaking to be answerable for all sums to be received by the receiver hereinafter named.

It is ordered that be appointed without security until the day of next inclusive or further order to receive the rents and profits of , but without prejudice to the rights of any prior incumbrancer or his possession (if any) and the tenants of the said estate are (without prejudice as aforesaid) to attorn and pay their rents in arrear and growing rents to the said so long as he shall continue to be such receiver, and that all questions as to passing his accounts and payments thereunder and all further questions be reserved until further order.

Defendant to be at liberty to apply in meantime.

Dated the day of , 19 .

No. 127.

RECEIVER ORDER (R. 538).

[*Heading as in Form 1.*]

Upon hearing for the plaintiff, and upon reading the affidavit of .

It is ordered that be appointed receiver upon first giving security by bond to the satisfaction of the local master of the supreme court (*or* "the local registrar," *as the case may be*) to receive the rents, profits, and moneys, receivable in respect of the following property (that is to say):

But this appointment is to be without prejudice to the rights of any prior incumbrancers upon the said premises, who may think proper to take possession of or receive the same by virtue of their respective securities, or, if any prior incumbrancer is in possession, then without prejudice to such possession.

And that the tenants of the said premises do attorn and pay their rents in arrear and growing rents to such receiver. And that such receiver have liberty, if he shall think proper (but not otherwise), out of the rents, profits, and moneys to be received by him, to keep down the interest upon the prior incumbrances, according to their priorities, and be allowed such payments (if any) in passing his accounts, and that such receiver shall on the* day of next, and at such

*3 months

further and other times as may be ordered by the master (*or*, "local registrar"), leave and pass such accounts, and shall on the† day of next, and at such further and other times as may be hereafter ordered by the master (*or*, "local registrar") pay the balance or balances appearing due on the accounts so left or such part thereof as shall be certified as proper to be so paid; such sums to be paid in or towards satisfaction of what shall for the time being be due in respect of the judgment signed on the day of for the sum of $ debt, and $ for costs, making together the sum of $; and that the costs of this order and of carrying the same into effect and of obtaining the discharge of the receiver (such costs to be ascertained by the master (*or* "local registrar") shall be primarily payable out of the sums received by the receiver, but if there shall be no sums received or the amount shall be insufficient, then upon the certificate of the master (*or* "local registrar") being given stating the amount of the deficiency (such certificate to be given after passing the final account), the amount of the deficiency so certified shall be paid by the judgment debtor to the judgment creditor.

†1 month after the 3 months

It is further ordered that the balance (if any) remaining in the hands of the receiver, after making the several payments aforesaid, shall forthwith be paid by the receiver into court to the credit of this action, subject to further order.

And any of the parties are to be at liberty to apply to the judge in chambers as there may be occasion.

Dated this day of , 19 .

No. 128.

ORDER FOR INTERIM INJUNCTION (R. 521).

[*Heading as in Form 1.*]

Upon hearing for the plaintiff and upon reading the affidavit of , filed the day of , 19 , and the plaintiff by his said undertaking to abide by any order the court or a judge may make as to damages in case the court or a judge should hereafter be of opinion that the defendant shall have sustained any by reason of this order which the plaintiff ought to pay. It is ordered and directed that the defendant , his agents and servants and every of them be restrained and an injunction is hereby granted restraining them and every of them from until after the trial of this action or until further order.

Dated the day of , 19 .

No. 129.

ORDER TO TRY BY JURY (R. 240).

[*Heading as in Form 1.*]

Upon hearing the solicitors on both sides
It is ordered that this action be tried with a jury.
And that the costs of this application be
Dated the day of , 19 .

No. 130.

ORDER FOR SECURITY FOR COSTS OF ACTION (R. 714).

In the Supreme Court.
day the day of , 19 .
Between *A. B.*, , plaintiff, and *C. D.*, , defendant.

Upon application of the defendant and on reading the affidavit of .

1. It is ordered that the plaintiff do within three months from the service of this order give security on his behalf in the penal sum of dollars, to answer the defendant's costs of this action, and that all proceedings be in the meantime stayed.

2. And it is further ordered that in default of such security being given by the plaintiff this action be dismissed (*where there are several defendants* as against such defendant) with costs, unless the court or judge upon special application for that purpose otherwise orders.

(Signed)

Clerk in Chambers.

No. 131.

ORDER FOR SALE (R. 583).

In the Supreme Court.
day the day of , 19 .
In the matter of (*or as the case may be*).
Before the Hon. Mr. Justice in Chambers.
Between *A. B.*, , plaintiff, and *C. D.*, , defendant.

Upon the application of the plaintiffs, and upon reading the summons herein, the affidavit of default, the abstract of

title, certificate as to decrees, liens and executions against the registered owner thereof, and the mortgage herein filed, Mr. , appearing for the plaintiffs, and , appearing for the defendant,

It is ordered and decreed that the amount due for principal and interest on the day of , 19 , is $.

It is further ordered that the defendant pay into court to the credit of this action on or before the day of , 19 , the said sum of $ with interest on the sum of $ from the day of , 19 , at the rate of per cent. per annum, together with the costs of this action to be taxed, and on default without further order the mortgaged premises be sold at the of in the Province of Saskatchewan under the direction of the sheriff for the judicial district of , two months' notice of the time, place and conditions of sale to be given in "The ," a ly newspaper published in the of in the Province of Saskatchewan, and by printed notices to be affixed two months prior to the said sale in five conspicuous places in the of , and in five conspicuous places in the of .

The plaintiffs are hereby given leave to bid. Terms of sale to be cash at the time of the sale, and the balance upon the transfer being duly confirmed within two months from the date of sale.

Upon delivery of the transfer duly confirmed the mortgaged premises to vest in the purchaser, and the defendant, and all persons claiming through or under him to give up possession thereof to the purchaser within twenty days after service upon them of the order confirming such sale. The Registrar of the Land Registration District to cancel the existing certificate of title, and to issue a new one in the name of the purchaser free from all right, title and equity of redemption on the part of the said defendant, or any person or persons claiming through or under him.

Proceeds of the sale to be applied as follows:

(1) In payment of the expenses of sale, including an allowance for the officer selling.

(2) In payment of the costs of the action.

(3) In payment of the amount due the plaintiffs under their mortgage, with interest down to the time of the delivery of the transfer.

(4) The balance (if any) to be paid into court to the credit of this cause.

Dated at Regina this day of , 19 .

(Signed)

Clerk in Chambers.

No. 132.

ORDER NISI FOR FORECLOSURE (R. 583).

In the Supreme Court.

day the day of , 19 .

Between *A. B.*, , plaintiff, and *C. D.*, , defendant.

The Hon. Mr. Justice , in Chambers.

Upon application of counsel on behalf of the above named plaintiff, upon hearing read the summons issued herein the day of , 19 , the material therein referred to, upon hearing of counsel for the defendant .

It is hereby ordered and decreed that the amount due for principal and interest under the mortgage between and , dated the day of , 19 , and covering the , in the Province of Saskatchewan, on the day of , 19 , is $;

And it is further ordered and decreed that the defendant pay into court to the credit of this cause on or before the day of , 19 , the said sum of $, with interest on $ at the rate of per cent. per annum from the said day of , 19 , together with the costs of action to be taxed;

And it is further ordered and decreed that in default of payment as aforesaid, by the said defendant, there will be a foreclosure absolute, the title of the said premises to vest and remain in the plaintiff absolutely free from all right, title and interest of the said defendant therein and of all persons claiming through or under him said defendant and all persons in possession of the said premises to give up possession thereof to the plaintiff within twenty (20) days after service upon them of a copy of such final order;

And it is further ordered that the costs of and incidental be costs in the cause.

(Signed)

Clerk in Chambers.

The Surrogate Court Rules and Forms

RULES AS TO PROCEDURE AND PRACTICE IN THE SURROGATE COURTS, AND IN RELATION TO MATTERS TESTAMENTARY, AND LETTERS OF ADMINISTRATION TO THE EFFECTS OF DECEASED PERSONS.

Noncontentious business, what to include

1. Noncontentious business shall include all common form business as defined by *The Surrogate Courts Act,* and the warning of caveats.

Application, who may make

2. Application for probate or administration may be made by a solicitor or in person.

Petition to be signed

3. Every application to a surrogate court for grant of probate or administration shall be by petition prepared, signed and presented by the applicant or his solicitor.

Such petition shall in every case show the value of the whole property of the deceased, and also the separate value of the personal and real estate, with full particulars, and an appraisement of all said property shall be exhibited with such application and shall be verified upon oath.

Proof of search

4. Upon every application for grant of administration, it shall be shown that search for will or testementary paper has been made in all places where the deceased usually kept his papers, and in his depositories. The affidavit should be made by the applicant, but the proof may, with the judge's consent, be made otherwise. It shall also be shown that search has been made in the office of the clerk of the proper surrogate court, and the certificate of such clerk shall be sufficient proof of such search having been made.

Bond to be given

5. Unless the judge shall otherwise order, the applicant shall, with the application for grant of administration, submit the bond proposed to be given, with the necessary affidavits of justification and of execution; and in every case such bond shall be made without material erasure or interlineation.

When affidavits to be made

6. The necessary affidavits to lead grant, and the usual oath of executors and administrators, may be taken at the time the application for grant is signed, or afterwards at any time before the application is submitted to the judge for his order and direction. The proofs to lead grant may be embodied in one affidavit.

Right of applicant to be established

7. The petition, and some one of the affidavits leading to the grant, must establish that no person has a prior right to the petitioner to the grant.

Oath of administration

8. The usual oath of administration is to be reduced to writing, and to be subscribed and sworn to by the executors, or administrators, as an affidavit.

Will to be marked

9. Every will or copy of a will, to which an executor or administrator with the will annexed is sworn, should be marked by such executor or administrator, and by the person before whom he is sworn.

Living person may deposit will

10. A living person may deposit his will, or any codicil thereto, for safe keeping in the office of the clerk for the judicial district in which he is domiciled. Such will or codicil shall be inclosed in an envelope and sealed, and shall be indorsed: "Last Will and Testament of (naming the testator)," or "Codicil to the last Will and Testament (naming the testator)," and shall be signed by the testator.

Wills of living persons to be numbered

11. The clerk shall number each such envelope consecutively, in the order in which it is presented, and he shall keep a book in which he shall enter, alphabetically, the names of such persons so depositing a will or codicil, the number of the envelope, and the date of the deposit.

Wills of living persons not to be removed except in person or by order

12. A will or codicil, deposited for safe keeping in the office of the clerk of the surrogate court, shall not be removed therefrom, except by the testator in person, unless an order of the judge permitting such removal shall have been first obtained.

Caveator to declare nature of interest

13. The party entering a caveat must declare therein the nature of his interest in the property of the deceased, and state generally the grounds upon which he enters such caveat, and the same shall be signed by the party, or by his solicitor on his behalf, and the proper place mentioned as the address of the party, or of his solicitor, entering the caveat; and no caveat shall have any force or effect, unless the requirements of this rule be in substance complied with.

Caveat in force three months

14. A caveat shall remain in force for the space of three months only, and then expire and be of no effect; but caveats may, subject to the judge's orders, be renewed from time to time.

Caveat how taken off

15. In order to clear off a caveat when no appearance has been entered to a warning duly served, an affidavit of the

service of the warning, stating the manner of service, and an affidavit of search for appearance and of nonappearance must be filed.

16. No caveat shall effect any grant made on the day on which the caveat is entered, unless notice of such caveat has been received prior to the grant being sealed. Caveat must be received prior to grant

17. A caveator shall be warned at the place mentioned in it as the address of the person who entered it, or of his solicitor. Address for warning

18. It shall be sufficient for the warning of a caveat that the clerk of the court, in which application for grant is made, send by post, prepaid and registered, a warning signed by himself bearing the seal of the court, and directed to the person who entered it, or to his solicitor, at the address mentioned in it. Warning, how given

19. Any person intending to oppose a grant of probate or administration, for which application has been made to a surrogate court, must within ten days after service appear, either personally or by a solicitor, and enter an appearance in such court, in which appearance the address of the party, or of his solicitor, shall be given. This rule is to apply whether the person intending to oppose the grant has, or has not, been previously warned of a caveat, or served with a citation or summons. Person opposing grant

20. When a party intending to oppose a grant has filed an appearance with a clerk, no further steps in respect to such grant shall be taken, except under the special direction of the judge. Appearance

21. Citations, summonses or notices issued in the exercise of probate jurisdiction may, in the discretion of the judge, instead of being directed to any person or persons by name be directed generally to the next of kin, creditors and other persons interested in the estate. C.O. 21, R. 593. Citations, etc.

22. All citations, summonses or notices issued in the exercise of probate jurisdiction may, by order of the judge, be published in such newspaper or newspapers published in the province as he may direct, and for such times as he may direct; and in that case no other notice or service thereof shall be necessary, unless the judge shall otherwise direct. C.O. 21, R. 594. Citation may be published

23. Unless otherwise ordered, where an executor or administrator has caused to be published for six successive weeks, in When estate may be distributed

the newspaper nearest the last domicile of the testator or intestate, a notice requiring creditors and others to send in to such executor or administrator claims against the estate together with a statement of the securities (if any) held by them within a time to be mentioned in the notice, which shall not be less than five days from the last publication of such notice, such executor or administrator may, at the expiration of the time so fixed, be at liberty to distribute the assets of the testator or intestate, or any part thereof, amongst the parties entitled thereto having regard to the claims of which such executor or administrator has then notice, and shall not be liable for the assets or any part thereof, as the case may be, so distributed, to any person of whose claim such executor, or administrator, shall not have had notice at the time of the distribution of the said assets or any part thereof, as the case may be; but nothing in this rule shall prejudice the right of any creditor or claimant to follow the assets, or any part thereof, into the hands of the person or persons who may have received the same respectively. C.O. 21, R. 595.

Verification of claims

24. Every creditor, or other person, presenting or sending in a claim to any executor or administrator, shall verify the same by a statutory declaration, and shall therein state whether he holds any security for his claim, or any part thereof, and shall give full particulars of the same; and if such security is on the estate of the debtor, or on the estate of a third party, for whom such debtor is only secondarily liable, he shall put a specified value thereon, and the executor or administrator may either consent to the right of the creditor or person presenting the claim to rank for the claim, after deducting such valuation, or he may require from the person presenting the claim an assignment of the security at the specified value to be paid out of the estate when sufficient is realised therefrom, and in such case, the difference between the value at which the security is retained by the executor or administrator, and the just amount of the gross claim, shall be the amount for which the creditor or other person shall rank in respect of the estate.

Security consisting of negotiable instruments

If a creditor or other person holds a claim, based upon negotiable instruments upon which the debtor is only indirectly or secondarily liable, and which is not mature or exigible, such creditor or other person shall be considered to hold security within the meaning of this rule, and shall put a value on the liability of the party primarily liable thereon, as being his security for the payment thereof; but, after the maturity of such liability and its nonpayment, he shall be entitled to amend and revalue his claim.

Omission to value security

In case a person presenting a claim holds security for his claim, or any part thereof, and he fails to value such security as required by this rule the judge may, on application by the executor or administrator, of which application three days'

notice shall be given to such claimant, order that unless a specified value shall be placed upon such security, and notified in writing to the executor or administrator within a time to be limited by the order, such claimant shall in respect of the claim, or the part thereof for which the security is held, be wholly barred of any right to share in the proceeds of such estate; and if a specified value is not placed on such security, and notified in writing to the executor or administrator according to the exigency of such order, the said claim or the said part, as the case may be, shall be wholly barred as against such estate. C. O. 21, R. 596.

Executors accounts

25. Every executor or administrator shall, within two years after the grant of letters of administration or probate, or such further time as the judge may allow, file in the office of the clerk of the court for the district wherein the grant was made, a statement and an account verified by his oath showing his administration of the estate, and apply to the judge to have his accounts passed and allowed whereupon a summons may be issued calling upon the creditors, next of kin, and all persons interested in the estate to attend the passing of the accounts.

Sureties to justify

26. The bond to be given upon any grant of administration shall be in form 17 with such variations as circumstances may require. The sureties in such bond are required in all cases to justify; and such justification shall be to an amount or amounts which, in the aggregate, shall equal the amount of the penalty of the bond. No clerk or surrogate registrar or solicitor shall become surety to any administration bond.

Under $200 one surety

27. In ordinary cases, where property is *bona fide* under the value of two hundred dollars, one surety only may be taken to the administration bond.

Notice of renunciation

28. Whenever any renunciation is filed subsequent to notice of application to the registrar, or any alteration is subsequently made in the grant, notice of such renunciation or alteration is to be immediately forwarded by the clerk of the court to the registrar.

S.C. rules as to affidavits to apply

29. The rules promulgated by the judges of the supreme court, with respect to affidavits to be used in that court, *mutatis mutandis,* apply to affidavits to be used in the surrogate court.

SURROGATE CLERKS.

Clerk's office hours

30. Every clerk of a surrogate court shall keep his office open, on such days and during such hours as the office of the clerk of the district court is required to be kept open.

Clerk's books

31. Every clerk of the surrogate court shall keep books. He shall keep such books duly indexed from time to time, and shall also keep an index of the names of testators or intestates, and of executors and administrators, which shall be arranged alphabetically. The noncontentious business book shall contain columns for the entry of the sworn value of the personal property, and of the real property.

To file papers

32. Every clerk shall duly indorse and file all papers received by him, and enter a note thereof, and of every proceeding in the court, in the books to be kept for that purpose.

Number and indorse applications

33. The clerk shall properly number and indorse the date of receipt of all applications for the grant of probate or administration received by him in the order in which they are received, and an entry thereof shall be made in the book to be kept for that purpose, with a number prefixed to correspond with the number on the application.

Notice of applications

34. Notices of applications to be transmitted to the surrogate registrar, under the 44th section of the Act, are to contain the Christian and surname, residence and addition of applicant, nature of application, and court in which made.

Papers to be transmitted by post

35. All papers and communications from clerks to the surrogate registrar shall be transmitted through the post office, the letter or packet to be registered and prepaid.

Note of surrogate certificate to be entered

36. Every clerk upon receipt of a certificate from the surrogate registrar touching an application made to the court, of which he is clerk, shall forthwith enter a note thereof in the book to be kept for that purpose; and shall, as soon as may be thereafter, lay such application, and all papers in relation to the same, before the judge, for his order and direction thereon.

Order to be noted

37. Every order made by the judge upon, or in reference to, any application, shall be noted by the clerk in the books to be kept for that purpose.

Grant to be recorded

38. When the judge makes an order for the grant of probate or administration, the clerk shall record such grant in the "register book," and in case of the grant of probate or letters of administration with the will annexed, an exact copy of the will, and codicil (if any) to which such probate or administration relates, shall be underwritten. If a grant be afterwards revoked, a note of such revocation shall be entered across the record of grant in the register book.

Probates etc., to be signed and sealed

39. All probates and letters of administration shall be signed by the clerk, and sealed with the seal of the court from which they are issued, and a copy of the will and codicil (if any) annexed to a probate, or to letters of administration, shall be authenticated by the signature of the clerk.

List of grants, etc., to be sent to registrar

40. The list of grants of probates and administration, and of revocation thereof, required under the 15th section of the Act to be sent by clerks to the surrogate registrar, are to contain, in each case, the Christian and surname, residence and addition of the deceased, the time of his death, date of the grant, name, residence and addition of executor or administrator, nature of grant, and in what surrogate court.

Caveats to be numbered

41. Every clerk of a surrogate court shall number, indorse and enter all caveats lodged with him, in the same manner as provided in respect to application for grants; and notice thereof shall be sent to the surrogate registrar by the next post after such caveat has been lodged.

APPEALS.

Regulations governing appeals

42. Appeals under the 36th section of the Act shall be subject to the following regulations:

1. An affidavit shall be made by the appellant, his solicitor or agent, that the property, goods, chattels, rights and credits to be affected by the order (or decree, as the case may be) appealed against are over the value of two hundred dollars.

2. A notice of such appeal containing the grounds of appeal (which shall be specifically set out) shall be served by the appellant on the opposite party, his solicitor or agent, and filed with the clerk of the surrogate court, together with an affidavit of due service thereof, and also with the affidavit mentioned in the next preceding clause.

3. If such affidavits and notice be so filed within fifteen days next after the order, sentence, judgment, decree or determination appealed against, the appeal shall be held to be duly lodged.

Proceedings may be stayed on appeal

43. When an appeal is so lodged, the judge of the surrogate court shall, upon the application of the appellant, order all proceedings in the matter to be stayed; and shall also, upon like application of the appellant, order the clerk of the court forthwith to transmit (at the expense of the appellant) to the local registrar of the supreme court at Regina the documents, instruments, affidavits and papers in the matter appealed, deposited or filed in such surrogate court, together with the judgment or decision of the judge.

Time for hearing appeal to be fixed

44. The appellant shall, within ten days after the material mentioned in the next preceding rule has been filed or deposited with the local registrar, apply to the judge of the supreme court in chambers to fix a time and place for the hearing of such appeal, and a copy of the appointment shall be served upon the opposite party or his solicitor.

If time not fixed appeal dismissed

45. In the event of the application mentioned in the last preceding rule not being made to the judge as therein provided, the appeal shall stand dismissed, and the order, sentence, judgment, decree or determination appealed against shall stand affirmed.

REMOVAL OF CAUSES.

Removing causes to supreme court

46. When a cause or proceeding is removed into the supreme court, under the 33rd and 34th sections of the Act, the judge of the surrogate court shall, upon the application of the party who has obtained the order for removal, in like manner as mentioned in rule 43, direct the papers in the matter to be transmitted to the surrogate registrar.

Judge to give directions

47. The surrogate registrar, upon receiving such papers, shall forthwith apply for directions to the judge of the supreme court sitting in chambers, who shall give such directions respecting the office of the supreme court, to which the surrogate registrar shall transmit such papers as he may consider advisable under the circumstances of the case.

THE SURROGATE REGISTRAR.

Applications to be numbered

48. The surrogate registrar shall properly number and indorse the date and receipt of all notices of applications to any surrogate court, for the grant of probate or administration received by him, in the order in which they are received; and an entry thereof shall be made in the book to be kept for that purpose, with a number prefixed to correspond with the number on the notice of application; and all caveats and copies of caveats lodged with, and received by the surrogate clerk, shall in like manner be numbered, indorsed, and entry thereof be made in a book to be kept for that purpose.

Communications

49. All communications from the surrogate registrar to clerks of surrogate courts shall be by registered letter.

FEES.

Fees of surrogate registrar

50. The surrogate registrar shall be entitled to take and receive for the performance of business and services under the Act the following fees:

(*a*) Each search other than search consequent upon receipt of notice under section 44 of The Surrogate Courts Act, if within one year.... $ .50

(*b*) Each such search, if beyond one year..... $1.00

(*c*) Each certificate other than certificate issued pursuant to section 45 of The Surrogate Courts Act..... .50

(*d*) Upon lodgment of a caveat, when filed with the Surrogate Registrar in the first instance .50

(*e*) Copies of documents, when prepared in the office, in addition to fee for certificate if required, per folio..... .10

(*f*) Examining copies of instruments on file, when prepared by solicitor, in addition to fee for certificate if required, per folio..... .05

Fees of clerk

51. The clerks of the surrogate courts shall be entitled to take and receive for the performance of duties:

On every grant of probate, or letters of administration, or for resealing of letters of probate or administration, including filing of record all papers, preparing probate or letters, presenting to the judge, and getting signed and recording same.

(*a*) When the grant is under section 77 of The Surrogate Courts Act.....$ .50

In other cases:

(*b*) When the sworn gross value of the estate does not exceed $200.00..... 1.00

(*c*) When such value exceeds $200.00 but does not exceed $500.00 ..... 3.00

(*d*) When such value exceeds $500.00 but does not exceed $1,000.00 ..... 5.00

(*e*) When such value exceeds $1,000.00 but does not exceed $2,000.00..... 7.50

(*f*) When such value exceeds $2,000.00 but does not exceed $5,000.00..... 10.00

(*g*) When such value exceeds $5,000.00 but does not exceed $10,000.00..... 15.00

(*h*) When such value exceeds $10,000.00 but does not exceed $20,000.00..... 20.00

(*i*) When such value exceeds $20,000.00..... 25.00

(*j*) Upon lodgment of caveat, including making copy and forwarding same to Surrogate Registrar ..... .50

(*k*) For receiving will of a living person for safe keeping, including issuing receipt therefor.. 1.00

(*l*) For services not herein specifically provided for, the same fee as is provided for similar services by the

tariff for local registrars in the supreme court, when the value of the estate exceeds $3,000.00.

When the value of the estate is $3,000.00, or less, the same fee as is provided for similar services by the tariff for clerks of the district courts. (In arriving at the value of the estate, the gross value is to be taken without any deductions for debts or liabilities.)

Fees of solicitors

52. Solicitors and counsel, practising in surrogate courts, shall be entitled for the performance of business and services under the Act to the following fees:

Drawing all necessary papers and proofs to lead grant and obtaining order for probate, or letters of administration in ordinary cases, and taking out same:

(*a*)	When the property devolving is $200.00 and under	$ 6.00
(*b*)	Over $200.00 and under $500.00	8.00
(*c*)	Over $500.00 and under $1,000.00	10.00
(*d*)	Over $1,000.00 and under $2,000.00	15.00
(*e*)	Over $2,000.00	25.00
(*f*)	For preparing affidavits and schedules required by The Succession Duty Act, and regulations thereunder:	
	Where the property devolving is $2,000.00, or under	4.00
	Over $2,000.00	6.00
(*g*)	Preparing bonds, when required, under The Succession Duty Act and regulations	4.00

(2) For all other services the same fee as is provided for similar services by the tariff for solicitors and counsel fees in the supreme court, except where the value of the estate is $3,000.00, or less, then same fee as is provided for similar services for solicitors and counsel in the district courts.

(The value of the estate is to be ascertained in the same way as is provided in the case of the clerks of the surrogate courts.)

Taxation

53. The clerk shall tax costs, subject to appeal to the judge.

FORMS.

Forms

54. The subjoined forms are to be adopted and followed in the several surrogate courts, as nearly as the circumstances of each case will allow.

In case the application be limited to administration of personal estate, the forms may be modified accordingly.

55. In the construction of these rules, the provisions contained in the second section of the Act shall apply. Construction

CONTENTIOUS BUSINESS.

56. A proceeding shall be adjudged contentious when an appearance has been entered by any person in opposition to the party proceeding, or when a citation or judge's order has been obtained against a party supposed to be interested in a proceeding, or when an application for grant is made on motion and the right to such grant is opposed, or when application is made to revoke a grant, or when there is a contention as to the right to obtain probate or administration, and before contest terminated. Contentious when appearance entered

57. The practice as to appearance shall, in so far as shall be practicable, be that prescribed by the consolidated rules of practice of the supreme court of Saskatchewan. Rules of S.C. to apply as to appearance

58. In contentious proceedings the practice and procedure shall, as nearly as may be, correspond with the practice and procedure in the supreme court after appearance entered. Rules of S.C. to apply as to practice

59. If the party who has entered an appearance shall not use due diligence in the prosecuting of the proceedings, the applicant may obtain a summons calling upon him to show cause why he should not file a plea within a limited time, or in default thereof why grant should not be made. Proceedings to be prosecuted with diligence

60. Any person not named in the petition, or in the order of the judge, may intervene and appear thereto, on filing an affidavit showing that he is interested in the estate of the deceased. Any other person may intervene

61. A party opposing a will may, with his statement of defence, give notice to the party setting up the same, that he merely insists upon the will being proved in solemn form of law, and only intends to cross examine the witnesses produced in support of the will, and he shall thereupon be at liberty to do so, and shall be subject to liability in respect of costs in the discretion of the judge. Statement of defence

62. If any defendant make default in filing and delivering a defence, the action may proceed notwithstanding such default; or the plaintiff may obtain a summons, calling upon the defendant to show cause why grant should not be made without further proceedings. To proceed in default of filing, etc., defence

63. In any case not provided for, and in which there is no analogous practice in the supreme court, the party desiring Practice S.C. to apply

to pursue a claim, remedy or right, may apply to the judge for direction and order as to the course to be pursued.

Forms

64. The forms subjoined to these rules, and numbered 35 to 39 respectively, are given as examples of statements of claim and of defence respectively.

How cited

65. These rules may be cited as "The Surrogate Court Rules."

NONCONTENTIOUS BUSINESS

FORMS.

No. 1.

Petition for Probate in Common Form.

To the Surrogate Court of the Judicial District of .

In the estate of , deceased.

The petition of (*name of petitioner*) of (*place of residence and occupation of petitioner*) humbly showeth:

1. That (*name of testator*) late of (*last place of residence and occupation of testator*) deceased, died at (*place of death*) on or about the day of , A.D. 19 , and at the time of his death had his fixed place of abode at in the judicial district of (*or* had no fixed place of abode in Saskatchewan, but had at such time property in the judicial district of).

2. That the said deceased in his lifetime duly made his last will and testament, bearing date the day of A.D. 19 ; (and codicil *or* codicils) bearing date the day of A.D. 19).

3. That your petitioner is the executor named in the said will.

4. That the total value of the property of the said deceased, which he in any way died possessed of or entitled to, and for and in respect to which probate of the said will (and codicil) is to be granted, does not exceed dollars in the whole, and consists of personal property of the value of about dollars and real property of the value of about dollars, and full particulars of all said property is set out in the affidavit made under *The Succession Duty Act,* and to be filed herewith in this honourable court.

5. No other application has been made to this honourable court to prove the said will, or for letters of administration with the said will annexed to the best of your petitioner's information and belief:

Wherefore your petitioner pray, that probate of the said will of the said deceased may be granted to him by this honourable court.

And your petitioner will ever pray.

Dated the day of 19 .

.....

No. 2.

Petition for Administration with Will annexed in common form where no executor appointed.

In the Surrogate Court of the Judicial District of .

In the estate of , deceased.

The petition of of in the Province of Saskatchewan, humbly showeth:

1. That , late of , in , deceased, died at in on or about the day of A.D. 19 , and at the time of his death had his fixed place of abode and was residing at in the judicial district of (*or* had no place of abode in Saskatchewan, but had at such time property in the judicial district of).

2. That the said deceased in his lifetime duly made his last will and testament, bearing date the day of A.D. 19 (and codicil *or* codicils) bearing date the day of A.D. 19).

3. That no executor is named in the said will (*or* codicil).

4. That your petitioner is the (*or* a) residuary legatee named in the said will (*or* codicil). (If the petitioner is not claiming as residuary legatee, state under what right he claims administration).

5. That the total value of the property of the said deceased, which h in any way died possessed of or entitled to, and for and in respect to which letters of administration with will annexed are to be granted, does not exceed dollars in the whole, and consists of personal property of the sum of about dollars, and real property of the value of about dollars, and full

particulars of all said property, is set out in the affidavit made under *The Succession Duty Act,* and to be filed herewith in this honourable court.

6. No other application has been made to this honourable court to prove the said will, or for letters of administration with the said will annexed, to the best of your petitioner's information and belief.

Wherefore your petitioner prays, that letters of administration, with the said will annexed, may be granted and committed to him.

And your petitioner will ever pray.

Dated this day of 19 .

.....

No. 3.

Petition for grant where Executor has renounced Probate or Residuary Legatee has renounced Administration with Will annexed.

To the Surrogate Court of the Judicial District of .

In the estate of deceased.

The petition of (*name of petitioner*) of (*place of residence and occupation of petitioner*) humbly showeth:

1. That (*name of testator*) late of (*last place of residence and occupation of testator*) deceased, died at (*place of death*) on or about the day of , A.D. 19 , and at the time of his death had his fixed place of abode at , in the judicial district of , (*or* had no fixed place of abode in Saskatchewan, but had at such time property in the judicial district of).

2. That the said deceased in his lifetime duly made his last will and testament, bearing date the day of A.D. 19 .

3. That (*giving name, residence and occupation of the executor named in the will* or *codicil,* or *the residuary legatee, as the case may be*) the executor (a residuary legatee) named in the said will has, by (*deed*) hereunto annexed, duly renounced all right and title to the probate and execution of the said will (and codicil, if any) (*or* letters of administration to the estate and effects of the deceased).

4. That your petitioner is (*state the character in which applicant claims*).

That the total value of the property of the said deceased, which he in any way died possessed of, or entitled to, and for and in respect to which probate of the said will (and

codicil) is to be granted, does not exceed
dollars in the whole, and consists of personal property of the value of about dollars and real property of the value of about dollars, and full particulars of all said property is set out in the affidavit made under *The Succession Duty Act* and to be filed herewith in this honourable court.

5. No other application has been made to this honourable court to prove the said will, or for letters of administration with the said will annexed, to the best of your petitioner's information and belief:

Wherefore your petitioner prays, that administration with the said will (*or* codicil) of the said deceased annexed, may be granted to him by this honourable court.

And your petitioner will ever pray.

Dated the day of 19 .

No. 4.

Petition for Grant of Administration.

In the Surrogate Court of the Judicial District of .

In the estate of , deceased.

The petition of
of
in the Province of Saskatchewan ,
humbly showeth:

1. That (*name of intestate*) late of
in
deceased, died at in
on or about the
day of A.D. 19 ,
and at the time of his death had his fixed place of abode and was residing at in the judicial district of
(*or* had no fixed place of abode in Saskatchewan, but had at such time property in the judicial district of).

2. That the said deceased died leaving him surviving (*insert here the name of the widow of the deceased, if any, and his next of kin, giving their names and residences, if known*) and no other person or persons entitled to share in his estate.

3. That the said deceased died intestate, without leaving any will or other testamentary paper.

4. That your petition is (*state the character in which the applicant claims*).

5. That the total value of the property of the said deceased which he in any way died possessed of, or entitled to, and for and in respect to which letters of administration are to be

granted, does not exceed dollars in the whole, and consists of personal property of the value of about dollars, and full particulars of all said property is set out in the affidavit made under *The Succession Duty Act,* and to be filed herewith in this honourable court.

6. No other application has been made to this honourable court for a grant of letters of administration, to the best of your petitioner's information and belief.

Wherefore your petitioner prays, that letters of administration of all the property of the said deceased may be granted and committed to h .

And your petitioner will ever pray.

Dated the day of 19 .

No. 5.

Notice to be transmitted by the Clerk of the Surrogate Court to the Surrogate Registrar of application made to such Court for grant of Probate or for Letters of Administration with the Will annexed.

In the Surrogate Court of the Judicial District of .

To the Surrogate Registrar:

Take notice, that application has been made to the surrogate court of the judicial district of for a grant of probate (*or* for letters of administration with the will annexed of the will bearing date the day of A.D. 19 (and codicil) (*or* codicils) bearing date the day of A.D. 19 , of (*name of deceased*) late of the (*residence and occupation of deceased*) deceased, who died on or about the day of A.D. 19 , having at the time of h death a fixed place of abode at (*place of residence*) in the said of (*or* no fixed place of abode in Saskatchewan) (*or* resided out of Saskatchewan) but having at such time property in the said judicial district of) by (*name, residence and occupation of the applicant*) the executor named in the said will (*or* codicil) (*or* if the application is for letters of administration with the will annexed state the right and circumstances under which the applicant claims).

Application received the day of A.D. 19 .
This notice mailed the day of A.D. 19 .

.....

Clerk of the said Court.

No. 6.

Certificate of Surrogate Registrar upon Notice of Application for Probate, or for Letters of Administration with the Will annexed.

Office of the Surrogate Registrar,
Regina.

In the estate of ,
deceased, named in a certain notice of application to the surrogate court of the judicial district of
for grant of probate (*or* letters of administration with the will annexed) dated the day of
A.D. 19 , and described therein as late of the (*residence and occupation of deceased*).

I, ,
the surrogate registrar, do hereby certify that no other application appears to have been made in respect to the property of the said deceased, no notice of application having been received by me from any of the clerks of the surrogate courts of the province save the above from the clerk of the surrogate court of the judicial district of
for the grant of probate of the will bearing date the
day of A.D. 19 , (*or* for grant of letters of administration with the will bearing date the
day of A.D. 19 , annexed).

(*If any other notice has been received state the fact and give full particulars.*)

And I further certify that no caveat, or copy of a caveat, against the grant of probate or administration in the property of the deceased has been lodged with or received by me.

(*If a caveat has been lodged or a copy received state the fact and give full particulars.*)

Dated at the day of
A.D. 19 .

To the Clerk of the Surrogate Court of the Judicial District of

.....
Surrogate Registrar.

No. 7.

Notice of Application for Administration.

In the Surrogate Court of the Judicial District of .

To the Surrogate Registrar:

Take notice, that application has been made to the surrogate court of the judicial district of
for a grant of letters of administration of the property of
late of the

(*residence and occupation of deceased*) deceased, who died intestate on or about the day of A.D. 19 , having at the time of h death a fixed place of abode at in the said of (*or* no fixed abode in Saskatchewan (*or* resided out of Saskatchewan) but leaving at such time property in the said judicial district of) by (*state name, residence and occupation of the applicant and the right under which he claims the grant*).

Application received the day of A.D. 19 .
This notice mailed the day of A.D. 19 .

.....
Clerk of the said Court.

No. 8.

Certificate of Surrogate Registrar upon Notice of Application for Administration.

Office of the Surrogate Registrar,
Regina.

In the estate of ,
deceased, named in a certain notice of application to the surrogate court of the judicial district of for a grant of letters of administration, dated the day of A.D. 19 , and described therein as late of the (*residence and occupation of deceased*).

I,
the surrogate registrar, do hereby certify that no other application appears to have been made in respect to the property of the said deceased, no notice of application having been received by me from any of the clerks of the surrogate courts of the province save the above from the clerk of the surrogate court of the judicial district of for the grant of letters of administration.

(*If any other notice of application has been received state the fact and give full particulars.*)

And I further certify that no caveat, or copy of a caveat, against the grant of probate or administration in the property of the deceased has been lodged with or received by me.

(*If a caveat has been lodged or a copy received, state the fact and give full particulars.*)

Dated at Regina the day of A.D. 19 .

To the clerk of the surrogate court of the judicial district of .

.....
Surrogate Registrar.

No. 9.

Form of Monthly Return to be made to the Surrogate Registrar by Clerks of Surrogate Courts as required by "The Surrogate Courts Act."

PROVINCE OF SASKATCHEWAN.

List of Grants and Revocations.

Monthly return from the Surrogate Court of the Judicial District of of all Grants of Probate and Letters of Administration issued out of (and of Revocations by) the said court from the day of A.D. 19 , to the day of A.D. 19 , inclusive.

Name, Residence and Addition of Deceased			Date of death	Date of grant or revocation	Names of Executors or Administrator	Nature of grant or revocation	In what Surrogate Court
NAME	Residence	Addition					

I, , Clerk of the Surrogate Court of the Judicial District of , do hereby certify that the above return is a just and true statement of the Grants of Probate and Letters of Administration and of Renunciations of Grants made and granted during the above period.

.....

Clerk.

No. 10.

Affidavit of Time of Death and Place of Abode of Testator or Intestate.

In the Surrogate Court of the Judicial District of .

In the estate of *W.A.*, deceased.

I, *A. B.*, of (*stating residence and occupation of deponent*) make oath and say, that I am one of the executors (*or* the executor) named in the last will and testament (*or* codicil) of the said *W. A.*, deceased (*or* the party applying for administration of the will and codicil, if any, annexed, *or* administration of the property of the said *W. A.*, deceased).

That said deceased died on or about the day of A.D. 19 , at , and that the said deceased, at the time of his death, had his fixed place of abode at , in the said judicial district of , (*or* "had no fixed place of abode in Saskatchewan" *or* "resided out of Saskatchewan"), but had at such time property in the said judicial district of .)

Sworn at in the Province of Saskatchewan the day of A.D. 19 before me . } *A. B.*

.....

Person authorised to administer oaths.

No. 11.

Affidavit of Search for Will.

In the Surrogate Court of the Judicial District of .

In the estate of *J. T.*, deceased.

I, *A. B.* of (*stating residence and occupation of deponent*) make oath and say, that I am a party applying for administration of the property of the said *J. T.*, late of (*state residence*) deceased. That I have made diligent and careful search in all places where the deceased usually kept his papers, and in his depositories, and in the office of the clerk of this court, in order to ascertain whether the deceased had or had not left any will; but that I have been unable to discover any will, codicil, or testamentary paper, and I verily believe that the deceased died without having left any will, codicil, or testamentary paper whatsoever.

Sworn at in the Province of Saskatchewan the day of A.D. 19 before me . } *A. B.*

.....

Person authorised to administer oaths.

Note—Where search in the office of the clerk has not been made by the deponent, personally omit the words "and in the office of the clerk of this court."

This affidavit, and the one next preceding it, may be made by some other person than the applicant, if the applicant cannot swear to the facts required.

No. 12.

Affidavit of Execution of Will by Subscribing Witness.

In the Surrogate Court of the Judicial District of .
In the estate of *A. B.*, deceased.

I, *C. B.*, of (*state residence and occupation of deponent*), make oath and say:

1. That I knew *A. B.*, late of (*state residence of deceased*).

2. That on or about the day of in the year of our Lord, one thousand nine hundred and I was personally present, and did see the paper writing hereto annexed, marked A, signed by the said *A. B.*, as the same now appears as and for his last will and testament, and that the same was so signed by the said *A. B.*, in the presence of me and of *E. F.*, of (*state residence and occupation*), who were both present at the same time; whereupon the said *E. F.* and I did, in the presence of the said *A. B.*, and in the presence of each other, attest and subscribe the said will.

Sworn at in the Province of Saskatchewan the day of A.D. 19 before me . } *C. D.*

.....

Person authorised to administer oaths.

If the will was executed by the testator making his mark, or by some person signing it for him at his request, this must be stated instead of what is set out in this form.

No. 13.

Affidavit of Value of Property.

No other affidavit of the value of property, and stating specifically of what it consists, will be necessary than the affidavit filed with the clerk under *The Succession Duty Act* and the orders in council made thereunder.

No. 14.

Oath of Executor.

In the Surrogate Court of the Judicial District of .
In the estate of *A. B.*, deceased.

I, (*name, residence and occupation of deponent*), make oath and say, that I believe the paper writing (*or* paper writings)

hereto annexed to contain the true and original last will and testament (and codicil) (*or* codicils) of *A. B.*, late of (*state residence at time of death and occupation of deceased*); that I am the sole executor (*or* one of the executors) therein named (*or* executor according to the tenor thereof), and that I will faithfully administer the property of the said testator by paying his just debts, and the legacies contained in his will (*or* will and codicils), so far as the same will thereunto extend and the law bind me, and by distributing the residue (if any) of the estate according to law; and that I will exhibit, under oath, a true and perfect inventory of all and singular the property of the testator, and render a just and full account of my executorship, within two years after the grant of letters of probate to me, and whenever thereunto lawfully required.

Sworn at in the Province of Saskatchewan the day of A.D. 19 before me . } *A. B.*

.....

Person authorised to administer oaths.

No. 15.

Oath of Administrator with Will Annexed.

In the Surrogate Court of the Judicial District of .

In the estate of *A. B.*, deceased.

I, (*name, residence and occupation of deponent*), make oath and say, that I believe the paper writing (*or* paper writings) hereto annexed to contain the true and original last will and testament (and codicil) *or* (codicils) of *A. B.*, late of (*residence at time of death, and occupation*) and that the executor therein named is dead, not having taken out probate, *or* has renounced all right and title to the probate and execution of the said will (*or as the fact may be*), and that I am the residuary legatee named therein (*or as the fact may be*), and that I will faithfully administer the property of the said deceased, according to the tenor of his will (*or* will and codicils) by paying his just debts and the legacies contained in his will (*or* will and codicils), so far as the same shall thereto extend and the law bind me, and distributing the residue (if any) of the estate according to law, and that I will exhibit under oath a true and perfect inventory of all and singular the property of the said testator, and render a just and true account of my administration within two years after the grant of letters of administration to me with the said will (and codicil) annexed, and whenever thereunto lawfully required.

Sworn at in the Province of Saskatchewan, the day of A.D. 19 before me . } *A. B.*

.....

Person authorised to administer oaths.

No. 16.

Oath of Administration.

In the Surrogate Court of the Judicial District of .

In the estate of , deceased.

I, of in the Province of Saskatchewan, make oath and say:

1. That I am the applicant for letters of administration of the estate of , deceased.

2. That I will, if appointed, faithfully administer the property of the said deceased by paying his just debts and by distributing the residue (if any) of the estate according to law; and that I will exhibit under oath a true and perfect inventory of all and singular, the property of the said deceased, and render a just and true account of my administration within two years after the grant of letters of administration to me whenever thereunto lawfully required.

Sworn before me at in the Province of Saskatchewan, this day of A.D. 19 . } .....

.....

Person authorised to administer oaths.

No. 17.

Administration Bond.

Know all men by these presents that we, *A. B.*, of in the Province of Saskatchewan, (*state occupation*) and (*C. D.*) of in the Province of Saskatchewan, (*state occupation*) and (*E. F.*) of in the Province of Saskatchewan (*state occupation*) are jointly and severally bound unto his honour the judge of the surrogate court of the judicial district of , in the sum of dollars, to be paid to him or to the judge of the said court for the time being, for

which payment well and truly to be made, we bind ourselves and each of us for the whole, our, and each of our, heirs, executors and administrators, firmly by these presents.

Sealed with our seals and dated the
day of A.D. 19 .

The condition of this obligation is such, that if the above named (*A. B.*) proposed administrat of all the property of late of in (*the name and residence at date of death of deceased*) deceased, who died on or about the day of A.D. 19 , do, if appointed such administrator, whenever lawfully called upon in that behalf, make or cause to be made a full, true and perfect inventory of all and singular the property of the said deceased, which has or shall come into the hands, possession or knowledge of the said (*A. B.*) or into the hands or possession of any other person or persons for h , and the same so made do exhibit or came to be exhibited into the office of the clerk of the surrogate court of the judicial district of , whenever required by law so to do; and the same property, and all other property of the said deceased at the time of h death, which at any time after shall come into the hands or possession of the said (*A. B.*) or into the hands or possession of any other person or persons for h , do well and truly administer according to law; that is to say, do pay the debts which the said deceased did owe at h decease,* so far as such property will thereunto extend, and the law bind him, and all the rest and residue of the said property do transfer, deliver and pay unto such person or persons, as shall be by law entitled thereto; and further do make, or cause to be made, a full, true and just account of h administration within two years after the grant of letters of administration to h by the said court, or whenever h shall be thereunto lawfully required; and if it shall hereafter appear that any last will or testament was made by the deceased, and the executor or executors therein named do exhibit the same unto the said court, making request to have it allowed and approved accordingly, if the said , being thereunto required, do render and deliver the said letters of administration (approbation of such testament being first had and made) in the said court; then this obligation to be void and of no effect, otherwise to remain in full force and virtue.

Signed, sealed and delivered in the presence of ..... (L. S.)
..... (L. S.)
..... (L. S.)
..... (L. S.)

**Note*—In case the bond is given in behalf of an administrator with the will annexed, the above form will be suitable, except that the following will be inserted where the asterisk is placed:

"And then the legacies contained in the said will annexed to the said letters of administration to the said (*A. B.*) committed,"

and then proceed as in the above form.

No. 18.

Affidavit proving Execution of the Bond.

In the Surrogate Court of the Judicial District of .
In the estate of , deceased.

I, (*name, residence and occupation of subscribing witness of bond*).

1. That I was personally present and did see (*name or names of the party or parties to the bond where execution thereof was witnessed by deponent*) named in the within bond, who are personally known to me to be the person named therein, duly sign and execute the same for the purpose named therein.

2. That the same was so executed on the day of the date thereof (*if executed at some other date, state it*) at in the Province of Saskatchewan, and that I am the subscribing witness thereto.

3. That I know the said (*naming the person or persons as above stated*) and , and they (*or he*) are each (*or* is) in my belief of the full age of twenty-one years.

Sworn before me at in the Province of Saskatchewan, this day of A.D. 19 } .....

.....

Person authorised to administer oaths.

No. 19.

Affidavit of Sureties.

In the Surrogate Court of the Judicial District of .
In the estate of , deceased.

We (*names, residences and occupation of sureties*) severally make oath that we are the proposed sureties on behalf of the intended administrat of the property of deceased, in the within bond named for the faithful administration of the said property of the said deceased; and I, the said *C. D.*, for myself make oath and say that I reside at in the Province of Saskatchewan, and

am possessed of property in the said province of the value of (*name amount for which he can justify*) dollars, all my debts being first paid, and over and above any other amounts for which I am now bail, or for which I am liable as surety or indorser or otherwise, and over and above all exemptions from seizure and sale under execution allowed by law;

And I, the said *E. F.*, for myself make oath and say that I reside at in the Province of Saskatchewan, and am possessed of property in the said province of the value of dollars, all my debts being first paid, and over and above any other amounts for which I am now bail, or for which I am liable as surety or indorser or otherwise, and over and above all exemptions from seizure and sale under execution allowed by law.

The aboved named
and were severally
sworn before me this
day of A.D. 19
at in the Province
of Saskatchewan.

C. D.
E. F.

.....
Person authorised to administer oaths.

No. 20.

Probate.

Canada:
Province of Saskatchewan.
In the Surrogate Court of the Judicial District of .

Be it known that on the* day of A.D. 19 , the last will and testament (*or* the last will and testament with codicils) of late of (*state residence at time of death*) who died on or about the day of A.D. 19 . at (*state place of death*) and who at the time of his death had a fixed place of abode at in the said judicial district of , (*or* "had no fixed place of abode in Saskatchewan" (*or* "resided out of Saskatchewan") but had at such time property in the said judicial district of), was proved and registered in the said surrogate court, a true copy of which said last will and testament is hereunder written (*or* true copies of which said last will and testament, and codicil, are hereunto annexed), and that the administration of all and singular the property of the said deceased, and any way concerning his will, was granted by the aforesaid court to , of the of in the judicial district of , the sole executor (*or as the case may be*) named in the said

will (*or* codicil), he having been first sworn well and faithfully to administer the same by paying the just debts of the deceased, and the legacies contained in his will (*or* will and codicils), so far as he is thereunto bound by law, and by distributing the residue (if any) of the property according to law, and to exhibit under oath a true and perfect inventory of all and singular the property, and render a just and true account of his executorship within two years after the grant of letters of probate to him or sooner if thereunto required.

[L.S.] .....

Clerk of the Surrogate Court of the Judicial District of .

No. 21.

Letters of Administration with Will Annexed.

Canada:
Province of Saskatchewan.
In the Surrogate Court of the Judicial District of .

Be it known that , late of (*state residence at time of death*), deceased, who died on or about the day of , A.D. 19 , at (*state place of death*) and who at the time of his death had a fixed place of abode at in the said judicial district of (*or* "had no fixed place of abode in Saskatchewan" (*or* "resided out of Saskatchewan") "but had at such time property in the said judicial district of ") made and duly executed his last will and testament (with codicils), and did therein name (*executor named in will*) of the of in, etc. , executor thereof who died (*or* renounced) (*or* named no executor therein), a true copy of which said last will and testament is hereunder written (*or* true copies of which said last will and testament and codicils are hereunder written); and

Be it further known that on the day of , A.D. 19 , letters of administration, with the said will (and codicils) annexed, of all and singular the property (*or*, as the case may be, if grant limited) of the said deceased were granted by the aforesaid surrogate court to of the of in the judicial district of (*insert the character in which the grant is taken, and if the executor has renounced, state it*) he, the said (*name of administrator with will annexed*) having previously been sworn well and faithfully to administer the same, according to the tenor

of the said will, by paying the just debts of the deceased, and the legacies contained in his will (*or* will and codicil), so far as the same shall thereunto extend and the law bind him, and by distributing the residue (if any) of the property according to law, and to exhibit under oath a true and perfect inventory of all and singular the property of the said deceased, and to render a true and just account of his administration within two years after the said grant of letters of administration, or sooner, if thereunto required.

[L.S.] .....

Clerk of the Surrogate Court of the Judicial District of .

No. 22.

Letters of Administration.

Canada:
Province of Saskatchewan.
In the Surrogate Court of the Judicial District of .

Be it known that on the day of , A.D. 19 , letters of administration of all and singular the property (*or, as the case may be, if grant limited*) of late of (*state residence at time of death*) who died on or about the day of A.D. 19 , at (*place of death*), intestate, and had at the time of his death a fixed place of abode at the of in the said judicial district of (*or* "had no fixed place of abode in Saskatchewan" (*or* "resided out of Saskatchewan") "but had at such time property in the judicial district of ") were granted by the said surrogate court to of the of in the judicial district of , the widow (*or, as the case may be*) of the said intestate, she having been first sworn faithfully to administer the same by paying his just debts, and distributing the residue (if any) of his property according to law, and to exhibit under oath a true and perfect inventory of all and singular the said property, and to render a just and true account of her administration within two years after the grant of said letters, or sooner if thereunto required.

[L.S.] .....

Clerk of the Surrogate Court of the Judicial District of .

No. 23.

Double Probate.

Canada:
Province of Saskatchewan.
In the Surrogate Court of the Judicial District of .

Whereas on the day of , A.D. 19 , the last will and testament (*or* the last will and testament with codicils) of , late of (*residence at time of death*); who died on or about the day of A.D. 19 , at (*place of death*) and who at the time of his death had a fixed place of abode at (*residence at time of death*) (*or* "had no fixed place of abode in Saskatchewan," (*or* "resided out of Saskatchewan") "but had at such time property in the said judicial district of ") was proved and registered in the said surrogate court, a true copy of which said last will and testament is hereunto annexed (*or* true copies of which said last will and testament and codicil are hereunto annexed), and the administration of all and singular the property of the said deceased and any way concerning his will, was granted by the aforesaid court to , of the of , in the judicial district of , one of the executors named in the said will (*or* codicil); power being reserved of making the like grant to , of the of , in the judicial district of , the other executor named in the said will, when he should apply for the same:

Be it therefore known, that on the day of A.D. 19 , the said will of the said deceased was also proved by, and that the like administration of all and singular the property of the said deceased, and any way concerning his will, was granted to the said , he having been first duly sworn well and faithfully to administer the same by paying the just debts of the deceased, and the legacies contained in his will (*or* will and codicil) so far as he is thereunto bound by law, and by distributing the residue (if any) of the property according to law, and to exhibit under oath a true and perfect inventory of all and singular the said property, and to render a just and true account of his executorship within two years of the grant of the said letters; or sooner if thereunto required.

[L.S.] .....

Clerk of the Surrogate Court of the Judicial District of .

No. 24.

Exemplification of Probate or Letters of Administration with Will annexed.

Canada:
Province of Saskatchewan.
In the Surrogate Court of the Judicial District of .

Be it known, that upon search being made this day made in his Majesty's surrogate court of the judicial district of , it plainly appears that on the day of A.D. 19 , the last will and testament (with codicils) of , late of the of , in the judicial district of (*or*, as the case may be), deceased, who died at , on or about the day of 19 , and had at the time of his death a fixed place of abode at , in the said judicial district of (*or*, as the case may be) was proved by of the of , in the judicial district of , the executor therein named (*or* that on the day of A.D. 19 , letters of administration with the last will and testament (and codicils) annexed of the property of , late of , etc., , were granted to of the of , in the judicial district of), and which said probate (*or* letters of administration) now remains of record in the said surrogate court. The true tenor of the said probate (*or* letters of administration with the will annexed) is in the words following, to wit: (*here let grant be recited verbatim*).

In faith whereof, these letters testimonial are issued.

Given at the of , in the judicial district of , this day of, etc.

[L.S.] .....
Clerk of the Surrogate Court of the Judicial District of .

No. 25.

Exemplification of Letters of Administration.

Canada:
Province of Saskatchewan.
In the Surrogate Court of the Judicial District of .

Be it known, that upon search being this day made in his Majesty's surrogate court of the judicial district of , it plainly appears that on the day of , A.D. 19 , letters of administration

of all and singular the property of , late of the , of , in the of , who died at , on or about the day of 19 , and had at the time of his death a fixed place of abode at , in the said judicial district of (*or,* as the case may be) were granted to , of the of , in the judicial district of , and which said letters of administration now remain of record in the said surrogate court. The true tenor of such letters of administration is in the words following to wit: (*here the letters of administration are to be recited verbatim*).

In faith whereof, these letters testimonial are issued.

Given at the of , in the judicial district of , this day of , etc.

[L.S.] .....

Clerk of the Surrogate Court of the Judicial District of .

No. 26.

Renunciation of Probate or of Administration with the Will annexed.

In the Surrogate Court of the Judicial District of .

Whereas, *A. B.,* late of (*state residence at time of death*), deceased, died on or about the day of , 19 , and had at the time of his death a fixed place of abode at , in the said judicial district of (*or,* as the case may be) and whereas he made and duly executed his last will and testament, bearing date the day of A.D. 19 , and thereof appointed *C. D.* executor (*or,* as the case may be), as I am informed and believe.

Now I, the said *C. D.,* do hereby expressly renounce all my right and title to the probate and execution of the said will (and codicils) (if any) of the said deceased.

In witness whereof, I have hereunto set my hand and seal, this day of A.D. 19 .

Signed, sealed and delivered in the presence of *E. H.* } *C. D.* [SEAL]

Note—*The above form may be varied, when the renunciation is by the widow, or other person, entitled to administration with the will annexed. In each case there must be an affidavit of execution.*

No. 27.

Renunciation of Administration.

In the Surrogate Court of the Judicial District of .

Whereas *A. B.*, late of (*state residence at time of death*), deceased, died on or about the day of , 19 , intestate (*a widower*), and had at the time of his death a fixed place of abode at , in the said judicial district of (*or*, as the case may be), and whereas I, *C. D.*, of the of , in the judicial district of (*or*, as the case may be), am his lawful , and his only next of kin (*to be varied according to the facts*).

Now I, the said *C. D.*, do hereby expressly renounce all my right and title to letters of administration of the property of the said deceased.

In witness whereof, I have hereunto set my hand and seal, this day of 19 .

Signed, sealed and delivered in the presence of *E. H.* } *C. D.* [SEAL]

No. 28.

Election by Minors of a Guardian.

In the Surrogate Court of the Judicial District of .

Whereas *A. B.*, late of (*state residence at time of death*), deceased, died on or about the day of , 19 , at , in , etc., intestate (*a widower*) leaving *C. D.*, *E. F.* and *G. H.*, his lawful children, and only next of kin, the said *C. D.* being a minor of the age of twenty years only, and the said *E. F.*, being also a minor of the age of nineteen years only, and the said *G. H.*, being an infant of the age of six years only:

Now we, the said *C. D.* and *E. F.*, do hereby make choice of and elect *K. L.*, of the of , in the judicial district of , our lawful maternal uncle, and one of our next of kin (*or*, as the case may be), to be our guardian, for the purpose of his obtaining letters of administration of the property of the said *A. B.*, deceased, to be granted to him until one of us attain the age of twenty-one years (*or*, for the purpose of renouncing for us, and on our behalf, all right, title and interest to, and in letters of administration, etc., *as the case may be*).

In witness whereof, we have hereunto set our hands and seals this day of A.D. 19 .

Signed, sealed and delivered in the presence of }

[L. S.]
[L. S.]

Note—*An affidavit of execution required.*

No. 29.

Affidavit of Plight and Condition of Finding.

In the Surrogate Court of the Judicial District of .

In the estate of , deceased.

I, *A. B.*, make oath and say, that I am the sole executor named in the paper writing now hereunto annexed, purporting to be and contain the last will and testament of *C. D.*, late of etc., deceased, who died on or about the day of at , and had at the time of his death a fixed place of abode at , in the said judicial district (*or, as the case may be*), the said will bearing date the day of , beginning thus , ending thus and being subscribed thus *C. D.*, and having viewed and perused the said will, and particularly observed that (*here recite the finding of the said will and the various alterations, erasures and interlineations, if any, and the general plight and condition of the will, or any other matter requiring to be accounted for, and clearly trace the will, from the possession of the deceased in his lifetime, up to the time of making the affidavit*); I, , lastly make oath that the same is now in all respects in the same state, plight and condition as when (*as the case may be*).

Sworn at in the judicial district of the day of A.D. 19 before me . } *A. B.*

Note—*The above form may be varied to suit the case of a codicil.*

No. 30.

Caveat.

In the Surrogate Court of the Judicial District of .

Let nothing be done in the estate of *A. B.*, late of the of in the judicial district of (*or, as the case may be*), deceased, who died on or about

the day of , 19 , at , and had at the time of his death a fixed place of abode at in the judicial district of (*or* "who had no fixed place of abode in Saskatchewan" (*or* "who resided out of Saskatchewan") "but had at such time property in the judicial district of " *or,* in the several judicial districts of), unknown to *C. D.* of the , etc. (*or* to *E. F.*, of , the solicitor of *C. D.*, of, etc.). The said *C. D.* is the lawful child and the only next of kin (*or, as the case may be*), of the said deceased. The grounds on which this caveat is entered are, that a paper writing, alleged to be the will of the deceased, was not executed by him (*or, as the case may be*).

(*C. D.*) of (*P.O. address*). *Or* (*E. F.*) solicitor for (*C. D.*) of (*P.O. address*).

No. 31.

Warning to Caveator.

In the Surrogate Court of the Judicial District of .

To *C. D.*, of , etc., (*or* to *E. F.* of , etc., the solicitor of *C. D.* of , etc.)

At the instance of *R. S.*, of , etc., you are hereby warned, that within ten days after the service of this warning upon you, inclusive of the day of such service, you cause an appearance to be entered for you in the office of the surrogate court of the judicial district of , to the caveat entered by you in the estate of , late of , etc., who died on or about the day of 19 , at , and had at the time of his death a fixed place of abode at (*as stated in the caveat*), and to set forth your (*or* your client's) interest, and take notice that in default of your so doing, the said court will proceed to do such acts, matters and things as shall be needful and necessary to be done in and about the premises.

Signed by the clerk, and sealed with the seal of the said court at the day of 19 .

[L.S.] .....

Clerk.

No. 32.

Notice of Caveat being Lodged with Clerk of Surrogate Court.

In the Surrogate Court of the Judicial District of .

To the Surrogate Registrar:

In the estate of , deceased.

A caveat, of which the following is a copy, has this day been lodged with me: "Let nothing," etc. (*here copy caveat at length and verbatim*).

Dated at the day of 19 .

.....

Clerk.

CONTENTIOUS BUSINESS

No. 33.

Statement of Claim.

In the Surrogate Court of the Judicial District of .

In the estate of *A. B.*, deceased.

Between *R. S.*, plaintiff, and *C. D.*, defendant.

The plaintiff is cousin-german and one of the next of kin of *A. B.*, late of (*state residence at time of death*), who died on or about the day of , A.D. 19 , a widower without child, parent, brother or sister, uncle or aunt, nephew or niece.

The plaintiff claims a grant to him of letters of administration of the property of the said deceased.

Delivered this day of , A.D. 19 by *E. F.*, of , plaintiff's solicitor.

No. 34.

Statement of Claim.

In the Surrogate Court of the Judicial District of .

In the estate of , deceased.

Between *R. S.*, plaintiff, and *C. D.*, defendant.

The plaintiff is the executor appointed under the will of *A. B.*, deceased, late of (*state residence at time of death*), who died on or about the day of , A. D. 19 , (and a codicil thereto bears date the day of , A.D. 19).

The plaintiff claims that the court shall decree probate of the said will and codicil in solemn form of law.

Delivered this day of , A.D. 19 by *E. F.*, of , plaintiff's solicitor.

No. 35.

Statement of Claim.

In the Surrogate Court of the Judicial District of .

In the estate of *A. B.*, deceased.

Between *R. S.*, plaintiff, and *C. D.*, defendant.

The plaintiff claims to be executor appointed under the will of *A. B.*, deceased, late of (*state residence at time of death*) who died on or about the day of , A.D. 19 , and to have the probate of a pretended will of the said deceased, dated the day of , granted by this court, revoked.

R. L.,
Plaintiff's Solicitor.

No. 36.

Statement of Claim.

In the Surrogate Court of the Judicial District of .

In the estate of *A. B.*, deceased.

Between *R. S.*, plaintiff, and *C. D.*, defendant.

The plaintiff claims to be executor appointed under the will of *A. B.*, deceased, late of the (*state residence at time of death*) who died on or about the day of , A.D. 19 .

The plaintiff claims that the grant of letters of administration of the property of the said deceased obtained by *M. N.*, the defendant, should be revoked and probate of the said will granted to him.

R. L.,
Plaintiff's Solicitor.

No. 37.

Statement of Defence.

In the Surrogate Court of the Judicial District of .

In the estate of *A. B.*, deceased.

Between *R. S.*, plaintiff, and *C. D.*, defendant.

The defendant is nephew and next of kin of the deceased, being the son of *W. B.*, the brother of the deceased, who died in his lifetime.

The defendant claims that the court pronounce that he is the nephew and next of kin of the deceased, and entitled to a grant of letters of administration of the property of the deceased.

Delivered this day of , A.D. 19 , by *E. F.*, of plaintiff's solicitor.

No. 38.

Statement of Defence.

In the Surrogate Court of the Judicial District of .
In the estate of *A. B.*, deceased.
Between *R. S.*, plaintiff, and *C. D.*, defendant.

(*a*) The said alleged will and codicils of the deceased were not nor was either of them duly executed, in accordance with the provisions of *"The Wills Act of Saskatchewan."*

(*b*) The deceased, at the time of the said alleged will and codicil respectively purport to have been executed, was not of sound mind, memory and understanding.

(*c*) The execution of the said alleged will (and codicil) was obtained by the undue influence of the plaintiff (and others acting with him whose names are at present unknown to the defendant (*or, as the case may be*).

(*d*) The execution of the said alleged will and codicil was obtained by the fraud of the plaintiff, such fraud, so far as within the defendant's present knowledge, being (*here state the nature of the fraud.*)

(*e*) The deceased, at the time of the execution of the said alleged will and codicil, did not know and approve of the contents thereof, *or* of the contents of the residuary clause of the said will (*or, as the case may be*).

(*f*) The deceased made his true last will and testament, dated the day of , A.D. 19 . and thereby appointed the defendant sole executor thereof.

(*Here add any other grounds of defence*).

And the defendant claims .

Delivered this day of , A.D. 19
by *E. F.*, of , plaintiff's solicitor.

No. 39.

Statement of Defence.

In the Surrogate Court of the Judicial District of .
In the estate of , deceased.
Between *R. S.*, plaintiff, and *C. D.*, defendant.

1. That the court will pronounce against the said alleged will and codicil propounded by the plaintiff.

2. That the court will decree probate of the said will of the deceased, dated the day of A.D. 19 (*the will put forward by defendant*) in solemn form of law.

SURROGATE COURT RULES.

RULE 3.—The appraisement should be made by an auctioneer or somebody whose business it is to value property. *Per* Rimmer, S.C.J.

Grant will not be given to a creditor unless special circumstances are shewn. *Per Wetmore,* C.J., in *Re Morden* (unreported).

A grant will not be given to any one *ex juris* unless the bondsmen are within the jurisdiction. *Re Yeoman* (unreported).

The production of an exemplification of probate under the seal of the High Court of Justice, England, together with the affidavits required by Succession Duty Ordinance, is sufficient to entitle the executor to ancillary letters probate. *Re Chesshire,* 2 Sask. L. R. 218.

In *Re Cook,* 11 W. L. R. 70, administration was refused in the case of a deceased foreigner with property within the jurisdiction, in the absence of any evidence whether administration had been granted abroad. In *Re Mikkelson,* 9 W. L. R. 608, under similar circumstances a grant was made.

RULE 23.—It is not absolutely necessary to obtain an order for advertising for creditors, but the Judge will not in its absence make an order for distribution so as to relieve the executor. *Re Lilly,* 1 W. L. R. 117.

RULE 25.—Money recovered for the death of a husband does not fall into the estate and cannot be garnisheed by creditors of the estate. *McEwen* v. *Speckt,* 4 W. L. R. 325.

As to accounts of an administrator carrying on deceased's business, see *Re Nugent,* 2 W. L. R. 3.

The Judge can, upon the passing of the accounts, adjudicate on claims not referred to in the Clerk's report. *Re Easten,* 4 W. L. R. 23.

Corroborative proof of claims is not required by the Judge. The responsibility of paying claims lies on the administrator, and if he uses care and judgment he will be allowed for all he thought fit to pay. *Re Blank,* 5 Terr. L. R. 236. In *Re Sapwell* (unreported) where there were insufficient funds to pay the creditors in full, the Judge decided what pro rata distribution should be made, but in general the Judge declines the responsibility of adjudicating on claims. *Re Blank, supra.*

RULE 43.—The appeal is to a Judge in Court. There is no appeal if the subject matter is less than $200. *Independent Order of Foresters* v. *McKenzie,* 13 W. L. R. 409; 3 Sask. L. R. 13.

District Court Rules

RULES OF THE DISTRICT COURTS

S. C. rules to apply

1. Unless otherwise provided in *The District Courts Act* the rules of the supreme court shall apply *mutatis mutandis* to the practice and procedure in the district courts.

Solicitors' fees

2. In all causes and matters in which duly enrolled solicitors holding certificates as such and resident in Saskatchewan are employed, they shall be entitled to charge and be allowed such fees as are set out in Schedule No. 1 of the Tariff of Costs in the column headed "District Court Scale."

Clerks' and Sheriff fees

3. There shall be paid to each clerk and sheriff the fees set forth in schedule No. 2 of the Tariff of Costs, in the column headed "District Court Scale."

SMALL DEBT PROCEDURE.

Claims for debt under $100

4. In all claims and demands for debt, whether payable in money or otherwise, where the amount or balance claimed does not exceed $100 the procedure shall, unless otherwise ordered or allowed by a judge, be as follows. C. O. 21, R. 602.

Entry of action

5. Every plaintiff when he enters an action with the clerk shall do so by leaving with him (by post or otherwise) a simple statement in writing (with a copy to file and one for each copy of writ desired) of the cause of action; in the case of an account the particulars may be in the usual form of items of an account or otherwise; in the case of a bill, note or order a copy thereof shall be furnished and in the case of a claim under any other written instrument a copy shall be furnished or a concise statement of the purport or effect of it shall be given to the extent of exhibiting the grounds of action so that in each case it may be known or understood by a person of ordinary intelligence what the action is brought for and the clerk shall attach to each copy of the summons a copy of such statement. C. O. 21, R. 603.

Particulars of claim

Address of parties

6. The plantiff shall also at the time he so delivers his statement to the clerk inform him of his post office address and of the full name of the defendant where practicable and also of his place of residence and post office address with as much certainty and particularity as possible. C. O. 21, R. 604.

Issue of summons

7. Upon receipt of such claim and upon payment of the proper fees therefor the clerk shall enter such claim in the procedure book to be kept by him for that purpose and shall issue a summons corresponding in substance with form A in the schedule hereto where the cause of action is within rule 12 hereof and with the form B in the schedule hereto where the cause of action is not within the said rule and shall make out as many copies of the said summons as there are defendants. C. O. 21, R. 605.

Delivery of summons

8. Upon the issue of the said summons the clerk shall deliver or transmit the same and the copies thereof with the copies of claim attached thereto to the plaintiff or as he may direct and shall attach to the original summons as many copies of the affidavit of service in form C in the schedule hereto as there are defendants in the said suit. C. O. 21, R. 606.

Time for return of summons

9. The summons shall be returnable—

1. Where the defendant resides in the judicial district from whence the summons issued, at the expiration of twenty days from the service thereof;

2. Where the defendant resides in any judicial district in Saskatchewan other than that in which such summons issued, at the expiration of twenty-five days from the service thereof;

3. Where the defendant resides in any place in Canada outside Saskatchewan or in the United States of America, at the expiration of thirty days from the service thereof;

4. Where the defendant resides in any part of the United Kingdom, at the expiration of thirty days from the service thereof;

5. In any of the above cases it shall not be necessary to obtain an order for service out of the jurisdiction. C. O. 21, R. 607.

Return to clerk after service

10. After the service of the said summons upon the defendant the plaintiff shall forthwith cause it to be returned to the clerk accompanied by an affidavit of service thereof in the said form C. C. O. 21, R. 608.

Clerk to notify plaintiff if dispute entered

11. After the receipt of such summons with the affidavit of service thereof the clerk shall, after the expiration of the time limited therein for appearance thereto, notify the plaintiff or his solicitor whether the defendant has or has not entered a dispute to the same. C. O. 21, R. 609.

Entry of judgment by default of dispute

12. In actions where the claim or demand is a mere account or is ascertained by some instrument signed by the defendant as a merchant's account, the price of goods sold and delivered, a claim for work and services, money paid, money lent, rent, a promissory note, a bill, order, bond, covenant for the payment of money or other memorandum showing liability for the payment of a sum certain or which can be ascertained by computation and the defendant does not appear according to the writ of summons the clerk may upon the said summons being returned to him with an affidavit of the due service thereof, after the time for appearance has expired, sign judgment for the amount of the claim and costs against the defendant by entering in his procedure book the words "judgment against the defendant by default," stating the date of such

entry and such entry shall be the judgment of the court in the cause and execution may issue and other lawful proceedings be taken thereon: Execution

Provided always it shall be competent for any judge on application by the person feeling himself aggrieved by any such judgment to set aside the said judgment and to let the defendant in to defend the said action, or to stay proceedings on such terms as to costs and otherwise as to him shall seem just. C. O. 21, R. 610. Setting aside judgment

13. If the defendant desires to defend any action or suit he must cause a written dispute note in form D in the schedule hereto to be delivered by post or otherwise to the clerk before the entry of judgment in which shall be stated briefly the nature or grounds of his defence and where a claim is disputed in part only he shall state what part thereof or the items he disputes. Notice of dispute

(2) The defendant shall in his notice of dispute give his post office address. C. O. 21, R. 611.

14. A defendant in any action may set off or set up by way of counterclaim against the claim of the plaintiff any right or claim whether such set-off or counterclaim sound in damages or not; such set-off or counterclaim shall have the same effect as if such relief were sought in a cross-action so as to enable the court to pronounce a final judgment in the same action both on the original and on the cross-claim. C. O. 21, R. 612. Setoff or counterclaim

15. After the filing by the defendant of his dispute note the clerk shall inform the judge that such dispute is so filed and the judge shall thereupon set the case down for trial in chambers or such other place as the judge may deem expedient and at such time as to him may seem expedient: Setting down for trial

Provided however that this rule shall in no wise affect the right of the plaintiff to move to strike out the said dispute note and for judgment or in any way curtail the powers given under rule 22 hereof: Striking out dispute, etc.

Provided further that either party may be represented on the trial in person, by solicitor or agent. C. O. 21, R. 613. Representation at trial

16. Upon the time and place of trial of an action being so fixed by the judge the clerk shall notify each party to appear for trial and that in default of appearance thereat judgment may be given against him by default with costs; such notice of the time and place fixed for such trial shall be forwarded by registered post to the respective addresses given by them: Notice of trial

Provided that if a defendant shall in his notice of dispute omit to state his post office address the notice to him shall be mailed to the address stated by the plaintiff as required by rule 6 hereof. C. O. 21, R. 614.

Application for postponement or change of place of trial

17. At any time before the trial of the action either of the parties may on reasonable notice to the other party or at the trial without notice apply for a postponement of the trial or a change of the place fixed for the same and the judge may thereupon give such direction as to postponement or change of place of trial and as to costs as he may deem fit.

Service of notices, etc.

(2) All notices, notices of motion and orders required to be served upon any party to the action may, unless otherwise ordered by the judge, be served by mailing the same to him by registered post to the post office address given by him to the clerk of the court under the provisions hereof or if no such address has been given to his last known post office address. C. O. 21, R. 615.

Suit erroneously brought under general procedure or recovery of less than $100

18. Unless the judge shall otherwise order, in case any action falling within the class provided for in this order is brought under the general procedure and the plaintiff succeeds or in case in an action of debt brought under the general procedure to recover only $100 the plaintiff recover less than that sum he shall recover only such costs as he would have recovered had the action been brought under the provisions of the small debt procedure and the defendant in any such action shall be entitled to tax his costs of suit between solicitor and client and so much thereof as exceeds the taxable costs of defence which would have been incurred had the proceedings been had under this procedure shall on entering judgment be set off and allowed by the clerk against the plaintiff's costs to be taxed or against the costs to be taxed and the amount of the judgment if it be necessary and if the amount of the costs so set off exceeds the amount of the plaintiff's judgment and taxed costs the defendant shall be entitled to judgment for the excess against the plaintiff. C. O. 21, R. 616.

Solicitor's fees

19. In every case where a solicitor is employed there shall be taxed to the successful party by the clerk in addition to all other costs in satisfaction of all solicitors' and counsel fees in undefended actions a sum equal to five per cent. of the amount of the judgment recovered and in defended actions where the successful party gets costs a sum equal to ten per cent. of the amount of the judgment recovered if such fee is taxable to the plaintiff or equal to ten per cent. of the amount claimed by the plaintiff in the action if such fee is taxable to the defendant:

Provided that in no case shall the fee so taxable be less than $1, and except as herein provided no other counsel or solicitor's fee shall be taxable or payable as between party and party. C. O. 21, R. 617.

Clerk's and sheriff's fees

20. There shall be paid to the clerk or deputy clerk and sheriff or deputy sheriff respectively for their services in

actions and suits within the provisions of this procedure the fees prescribed by the tariffs of clerk's and sheriff's fees in *The Small Debt Tariff* contained in the schedule thereto. C. O. 21, R. 618.

Witness and interpreter fees

21. Witnesses and interpreters in actions and suits within the provisions of this procedure shall be entitled to the fees and remuneration set forth in *The Small Debt Tariff* contained in the schedule hereto and such fees shall be taxable to or against the successful party, as the case may be, to the same extent as they are taxable in other cases under these rules:

Cost of evidence by commission, etc.

Provided that the judge may in any case direct the taxation to either party of the reasonable costs and expenses of obtaining evidence by commission or otherwise. C. O. 21, R. 619.

Adoption of general procedure

22. Except as to the matters specially provided for the procedure or practice in district courts where not inconsistent herewith shall be adopted and supplied in actions brought under the small debt procedure. C. O. 21, R. 620.

Præcipe and indorsement unnecessary

23. It shall not be necessary upon the commencement of any proceeding or the issue of any process in actions coming under the provisions of the small debt procedure for any party to file a præcipe nor shall it be necessary to indorse upon any such process the name of the person by whom or on whose behalf the same was issued. C. O. 21, R. 621.

Informalities

24. No proceedings under these rules shall be deemed invalid for informality provided the same are a substantial compliance with the requirements of these rules as to such proceeding. C. O. 21, R. 622.

SCHEDULE.

Form A.

(*Rule 7.*)

Small Debt Summons A.

In the District Court, Judicial District of .
Between , of , plaintiff, and , of , defendant.
To *C. D.*, the above named defendant:

The plaintiff demands of you $, as shown by his claim hereto attached or indorsed hereon.

You are notified that this summons is returnable on the day after the day of the service thereof upon you. If you dispute the claim or any part thereof you are to leave with the clerk of this court at in said judicial district within days after the said service upon you the dispute note hereto attached or one to the like effect otherwise after such return day has passed the clerk may sign judgment against you by default for the plaintiff's claim and costs but in case you give or send by mail or otherwise said dispute note to the said clerk together with the sum of $ for his fees and he receives the same within the said time the cause will be tried at a sittings of this court and you will receive due notice of the time and place of such trial by registered letter sent prepaid to the address given by you in said dispute note.

Dated the day of 19 .

By the court, *I. J.*,
[L.S.] *Clerk.*

Form B.

(*Rule 7.*)

Small Debt Summons B.

In the District Court, Judicial District of .
Between , of , plaintiff, and , of , defendant.
To *C. D.*, the above named defendant:

Take notice that the plaintiff claims from you $ as shown by his claim hereto attached or indorsed hereon.

If you dispute the same or any part thereof you are to leave with the clerk of this court at in said judicial district within days after the service hereof upon you the dispute note hereto attached or one to the like effect. In case you give or send by mail or otherwise the said dispute note to the said clerk together with the sum of $ for his fees and he receives the same within the said

time the cause will be tried at a sittings of this court and you will receive due notice of the time and place of such trial by registered letter sent prepaid to the address given by you in such dispute note.

If no such dispute note is filed the plaintiff's cause of action shall be deemed to be admitted and the amount the plaintiff is entitled to recover in respect thereof will be ascertained in such manner as a judge shall direct.

Dated the day of 19 .

By the court, *I. J.*,

[L.S.] *Clerk.*

FORM C.

(*Rule 8.*)

SMALL DEBT—AFFIDAVIT OF SERVICE.

In the District Court, Judicial District of .

Between *A. B.*, plaintiff, and *C. D.*, defendant.

I, , of (*occupation*) make oath and say:

1. That I did on the day of , 19 , personally serve *C. D.*, the above named defendant, with a true copy of the summons herein hereunto annexed by delivering the said copy to and leaving the same with the said defendant at .

2. That at the time of such service there was attached to the said copy of summons so served a true copy of the particulars of claim attached to or indorsed upon the said annexed summons.

3. That at the time of such service there was also attached to the said copy of summons a blank form entitled in this cause of which the form marked "D" is a true copy.

4. That to effect such service I necessarily travelled miles.

Sworn before me at
in the
this day of
A.D. 191 .

FORM D.

(*Rule 13.*)

SMALL DEBT—DISPUTE NOTE.

In the District Court, Judicial District of .

Between *A. B.*, plaintiff, and *C. D.*, defendant

Take notice that I dispute the plaintiff's claim on the following grounds:

(*Here state briefly the grounds of defence in such manner that the particular nature of the defence may readily be ascertained.*)

My post office address is:

C. D.

N.B.—This note must be sent by mail or otherwise to the clerk of the district court at (*address to be filled in by clerk*) within days from service.

Small Debt Tariff.

(*Rules 20 and 21.*)

CLERK'S FEES.

The following fees and no others shall be paid to clerks of the court for the several services under the Small Debt procedure herein provided for:

	cts.
Receiving claim, entering in procedure book and issuing summons	75
Garnishee summons or writ of attachment, including examining affidavits	50
Every original subpœna	50
Every copy of summons, garnishee or subpœna	10
Entering dispute note, or appearance by garnishee	25
On payment of money into court without dispute note	25
Every notice of trial	20
Hearing fee in contested cases	50
Every chamber summons or judge's order including entering	25
Every commission to examine witnesses or exemplification of judgment	50
Every appointment	10
Every search	10
Entering every judgment by default including search for dispute and taxation of costs and necessary filings	50
Entering every judgment after trial or order for judgment	50
Filing every exhibit at trial (no other filings to be allowed)	10
Every reference to the clerk, per hour actually engaged	75
Every certificate	25
Every writ of execution	50
Every renewal thereof	25
Copies of documents, per folio	10

Necessary postages.

SHERIFF'S FEES.

The following fees and no others shall be allowed to sheriffs, deputy sheriffs and bailiffs for services under the Small Debt procedure:

Service of summons or other process including affidavit of service, oath and return	$ 50
Every seizure	50
Schedule of goods seized, including copy for person whose goods seized	75
When over 500 words, per 100 over 500	10
Every mile necessarily travelled to serve summons or process, or in going to effect seizure under an attachment or under execution where money made or settlement effected after levy, provided that there shall be only one allowance of mileage fees in and about a seizure and the sale consequent thereon	10
Every bond including affidavits	1 00
Notice of sale	30
Each copy not exceeding five including posting up	10
Notice of postponement including copies	25
All necessary disbursements for removal and care of property seized	
For poundage on executions, five per cent., but not upon any sum greater than called for by the writ under which the officer acts.	
Receiving, entering and returning every writ of execution	25

WITNESS FEES.

In cases under Small Debt procedure—

Attendance, per day	$1 00
Mileage, each way	10

Where railway can conveniently be used witnesses shall only be allowed such sum as would be sufficient to pay railway fare in coming to and returning from place of trial in no case to exceed mileage at above rate.

INTERPRETERS.

In cases under Small Debt procedure—

Per day employed	$2 00

DISTRICT COURT RULES.

RULE 4.—A claim for value of straw, payable as rent, is not a claim for a debt within the procedure. *Paradis* v. *Hotton,* 3 W. L. R. 317, 6 Terr. L. R. 319.

A servant's claim for a month's wages (though only part of the month had been worked) on wrongful dismissal is a claim for damages and does not come within the procedure. *McNeilly* v. *Beatty,* 4 Terr. L. R. 360.

Where defendant is not prejudiced an order may go to allow the action to proceed under ordinary procedure. *McNeilly* v. *Beatty, supra.*

Protest fees are recoverable as a liquidated demand. *Cavanagh* v. *Gilroy,* 3 Terr. L. R. 300.

Debt includes a claim for value of goods sold where no price is agreed upon. *Henry* v. *Mageau,* 5 Terr. L. R. 512.

A plaintiff can sue for value of goods wrongfully converted if he expressly waives the tort. *Henry* v. *Mageau, supra.*

Where the debt sued on is over $100 the plaintiff can waive the surplus and sue under the procedure. It is not necessary to waive special items, it is sufficient to waive the surplus generally. *McLeod* v. *Seckavitch,* 7 Terr. L. R. 30.

Where there are two claims and one is outside the procedure the proceedings will be set aside. *Paradis* v. *Hotton,* 3 W. L. R. 317; *Cosgrave* v. *Duchek,* 3 W. L. R. 320.

RULE 5.—It is not necessary that a proper case for service *ex juris* be shewn by the statement of claim, but if defendant, served *ex juris,* can shew that the action is one in which service *ex juris* would not be allowed under the ordinary practice, it will be set aside. *McCarthy* v. *Brener,* 2 Terr. L. R. 230.

Service fees *ex juris,* when reasonable, may be taxed. Per Newlands, J., in *Sylvester* v. *Kelso* (1904), unreported.

RULE 12.—Execution lands may issue when the judgment (originally less than $50) amounts with accrued interest to $50. Per Newlands, J., in *Kirkby* v. *McGurk* (1905), unreported.

RULE 13.—When a dispute note is filed the solicitor can charge 10 per cent. fee. *Brown* v. *Rigby* (1905), unreported.

RULE 14.—A defendant can set up a counterclaim exceeding $100. If dismissed with costs the plaintiff can tax 10 per cent. on the amount claimed. *Cox* v. *Christie,* 5 Terr. L. R. 475.

It is not necessary to file a reply to a counterclaim. *Kirkland* v. *Hole,* 7 Terr. L. R. 64; *Cosgrave* v. *Duchek,* 3 W. L. R. 194.

If plaintiff discontinues after a counterclaim is made in the dispute note the defendant should set down the counterclaim for trial. *Cosgrave* v. *Duchek,* 3 W. L. R. 194.

RULE 18.—In a claim for over $100 the defendant paid into Court $100, which was accepted by the plaintiff. Scale costs allowed. *Reid* v. *Bocz* (1903), decided 12th February, 1904, unreported.

In an action for detention of a horse worth $1,000 plaintiff recovered $10 and return of the horse. Scale costs allowed. *Allison* v. *Christie,* 2 Terr. L. R. 279.

RULE. 24.—"Small debt proceedings are the least technical possible." *Youngson* v. *Thompkins,* 1 W. L. R. 114.

Tariff of Costs

TARIFF OF COSTS

SCHEDULE I.

Solicitor's Fees.

Instructions.	Supreme Court Scale	District Court Scale
1. To sue in undefended cases	$3.00	$2.00
2. To sue in defended cases	4.00	2.00
3. To defend	4.00	2.00
4. For matters not commenced by statement of claim, originating summons, or petition	2.00	1.00
5. For pleadings or petition, to be allowed only once to the same party except where otherwise provided	2.00	1.00
6. For counterclaim when such claim could not heretofore form the subject of a set off	2.00	1.00
7. For defence to such counterclaim	2.00	1.00
8. For reply to defence or reply to defence to counterclaim	2.00	1.00
9. To amend any pleading when such amendment proper	2.00	1.00
10. For special case, or issues of fact	2.00	1.00
11. To add parties by order of court or judge	2.00	1.00
12. To defend added parties	2.00	1.00
13. For brief in Court	5.00	2.00
14. For brief in all other contested matters when allowed by the taxing officer	2.00	1.00
15. To counsel in special matters when the counsel is not the solicitor in the cause	2.00	1.00
16. For special affidavits when allowed by the taxing officer	1.00	.50
17. For notice to admit either facts or documents or to demand particulars in the discretion of the taxing officer	2.00	1.00
18. For such other important step or proceeding in the suit as the taxing officer or a judge is satisfied warrants such charges	2.00	1.00
Writs.		
19. All writs except subpœnas including indorsements and attendances on local registrar and sheriff	$2.00	$1.00
20. Renewing writs including attendances on local registrar and sheriff	1.50	1.00
21. Subpœna ad testificandum	1.00	.50
22. Subpœna duces tecum	1.50	.75
23. Every writ over four folios, per folio additional	.20	.20

	Supreme Court Scale	District Court Scale
24. For every copy of writ including indorsements	1.00	.50
If over four folios, per folio additional	.10	.10
25. Service of each copy of writ when taxable to the solicitor	1.00	.50
26. For every mile necessarily travelled in effecting such service	.10	.10
27. For service out of the jurisdiction such allowance as the taxing officer or judge shall think fit.		
Drawing Pleadings, Etc.		
28. For statement of claim or defence	$3.00	$1.50
For every folio above ten, in addition	.20	.20
29. For counterclaim	2.00	1.00
For every folio above ten, in addition	.20	.20
30. Reply and subsequent pleadings except joinder of issue	2.00	1.00
For every folio above five, in addition	.20	.20
31. Joinder of issue when necessary	.50	.25
32. Appearance, including attendance to enter	1.00	.50
33. Petition, issues for trial of fact by consent or order, special cases, bills of cost, and all other original documents required in any suit or proceeding, per folio	.20	.20
34. Drawing all bonds including all necessary attendances and affidavits	5.00	3.00
Copies.		
35. Of pleadings and other documents where such copies are necessary, including always one copy of each pleadings for the solicitor drawing same, per folio	$ .10	$ .10
36. Of order of the court or a judge or of notice of motion	.50	.30
If over three folios, per folio additional	.10	.10
Notices.		
37. Notice of motion	$2.00	$1.00
If over five folios, per folio additional	.20	.20
38. Notice by defendant to third party under third party procedure	2.00	1.00
39. Notice to admit facts or documents	1.00	.50
If over three folios, per folio additional	.20	.20
40. All other notices and demands not elsewhere provided for	.50	.25
If over three folios, per folio additional	.20	.20

Perusals.	Supreme Court Scale	District Court Scale
41. Of every pleading, petition or notice of motion	$1.00	$ .50
42. Of special case or issue of fact	1.00	1.00
43. Of notice to admit facts or documents, and demand for particulars and of the answers to such notices and demands	1.00	.50
44. Of affidavits and exhibits of parties adverse in interest filed or produced on any application, where perusal is necessary	1.00	.50
For each additional folio above twenty	.05	.05
Not in any case to exceed $5.00.		
Attendances not Otherwise Provided for.		
45. Necessary attendances consequent upon service of notice to produce or admit, or inspection of documents when produced, including making admissions	$1.00	$ .50
46. Attendance on judge in chambers not otherwise provided for	1.00	.50
47. Attending on return of summons or notice of motion before a judge, to be increased in the discretion of a judge to $2.00	1.00	.50
48. A consultation or conference with counsel in special or important matters, in the discretion of the taxing officer or judge	2.00	1.00
49. A consultation or conference with client on taxations between solicitor and client, to be increased in the discretion of the taxing officer	1.00	.50
50. Solicitor attending court on trial of cause when not himself counsel or partner of counsel, per hour	2.00	1.00
51. To hear judgment when not given at the close of the trial	2.00	1.00
52. On taxation of costs per hour	2.00	1.00
53. To obtain or give undertaking to appear when service of summons accepted by solicitor	1.00	.50
54. Attendance in special matters, on examination of witnesses, or on discovery, or on passing accounts, per hour	2.00	1.00
55. Attendance to file or serve	.50	.25
56. Every other necessary attendance	.50	.25
Briefs.		
57. For drawing brief not exceeding five folios	$2.00	$1.00
For every additional folio of original and necessary matter	.20	.20
58. Copies of necessary documents, per folio	.10	.10
59. Copy of brief for second counsel when fee taxed to him, per folio	.10	.10

Affidavits.

	Supreme Court Scale	District Court Scale
60. Drawing affidavits, per folio	$ .20	$ .20
61. Engrossing same, per folio	.10	.10
62. Copies, when necessary, for folio	.10	.10
63. Common affidavits of service and of default of appearance or defence or payment into court including attending to swear	1.00	.50
64. Commissioner or other officer administering oath, for each oath	.25	.25
65. Commissioner or other officer administering oath, for each exhibit	.10	.10
66. Solicitor for preparing each exhibit	.10	.10

Judgments, Rules, Orders, Etc.

67. Fee on every judgment or order	$1.00	$ .50
68. Fee on judgment in lien cases, or mortgage cases for foreclosure or sale	1.00	1.00
69. Drawing judgment or order or minutes thereof when prepared by the solicitor, per folio	.20	.20

Letters.

70. Letter to every defendant before suit, only one letter to be allowed to any defendants who are partners where suit relates to the partnership matters	$ .50	$ .25
71. Common letters, including necessary agency letters	.50	.25
The taxing officer may increase the fee for special and important letters to an amount not exceeding $5.00 as between solicitor and client.		
72. Postage, the amount expended therefor.		

Counsel Fees.

73. Fee on all *ex parte* motions, to be increased in the discretion of the taxing officer up to	$2.00 3.00	$1.00 2.00
74. Fee on all motions or applications not *ex parte,* which may be increased in the discretion of the taxing officer in contested cases	5.00	3.00
75. Fee on argument, or supporting or opposing application to the court, special case, motion for a new trial or appeal, to be increased in the discretion of a judge	10.00	5.00

	Supreme Court Scale	District Court Scale
76. Fee with brief at trial, summary or otherwise, or in arbitration, to be increased in the discretion of a judge, provided that not more than one counsel fee shall be allowed in any case not of a special nature, and not more than two in any case	$10.00	$5.00
77. Fee attending upon reference to local registrar or other person where no witnesses are examined, to be increased in the discretion of the taxing officer in special and important cases	2.00	1.00
78. Fee attending on examination of witnesses, examination for discovery, or when taking evidence under order or commission, to be increased in the discretion of the taxing officer in special and important cases	10.00	5.00
79. On settling pleadings, issue of fact, special cases or petitions, or advising on evidence, in the discretion of the taxing officer not exceeding	5.00	3.00
80. Fee on settlement of all contested actions to be increased in the discretion of the taxing officer	10.00	5.00

Sales by Order of the Court.

81. Drawing advertisement	$2.00	$1.00
If over five folios, for each folio additional	.20	.20
82. Copies, per folio	.10	.10
83. Each necessary attendance on printer	.50	.25
84. Revising proof	1.00	.50
85. Attending to settle advertisement	1.00	.50
86. Attending to make arrangements with auctioneer	1.00	.50
87. Fee on conducting sale, when held where solicitor resides	5.00	3.00
If solicitor engaged for more than three hours, for each additional hour	1.00	.50
88. Fee on conducting sale elsewhere, when solicitor attends with approval of judge, in addition to necessary travelling and hotel expenses, for each day necessarily absent attending such sale	10.00	5.00
89. Preparing conveyance or mortgage, including duplicate when necessary and all necessary affidavits and attendances	5.00	5.00
If over ten folios, per folio additional	.30	.30

	Supreme Court Scale	District Court Scale
All disbursements properly vouched for when necessary in the discretion of the taxing officer.		

Matters Before the Court En Banc.

90. All necessary disbursements properly vouched for.		
91. Instructions to bring or defend all Chamber appeals	$ 5.00	$3.00
92. In all other appeals	10.00	5.00
93. Notice of appeal	5.00	3.00
If over 10 folios, per folio	.20	.20
94. Every copy, per folio	.10	.10
95. Counsel fee revising notice of appeal	5.00	3.00
96. Settling appeal books	5.00	3.00
97. When appeal books are authorised by a judge in typewriting, an original and eight copies to be provided, for each of which on taxation is to be taxable, per folio (in district court appeals seven copies only to be allowed)	.03	
98. When appeal books are printed, a fee for superintending printing, including an attendance on printer	2.00	
And for proof reading, per page	.10	
99. Drafting and engrossing factum, per folio of original matter	.30	.30
100. If printed, the amount actually and reasonably paid to the printer.		
101. Superintending printing of factum including attendance	2.00	
102. For proof reading, per page	.10	
103. If factum typewritten, per folio for all necessary copies	.05	
104 Transmitting or delivering factum to registrar, including all postage and attendances	1.00	
105. Counsel fee, including brief and all charges in connection therewith in the discretion of the court.		
106. For all services not hereinbefore provided for, the same fees as are authorised by the tariff of solicitors' fees in the court from which the appeal is brought.		

Matters of Appeals From Summary Convictions.

107. Taking instructions.....$2.00
108. Attending to bespeak, and for copy of depositions and conviction, or minute of judgment..... .50
109. Notice of appeal and copy..... 1.00
110. Preparing recognisances, including all attendances and affidavits in connection therewith 3.00
111. If appellant deposit in lieu of security all attendances 2.00
112. Attending to set down appeal..... .50
113. Respondent's solicitor attending to see if appeal entered for trial..... .50
114. Respondent's solicitor examining recognisance and papers filed..... 1.00
115. Every other and ordinary necessary attendance ..... .50
116. Every necessary letter or notice, including copy ..... .50
117. Counsel fee on hearing.....10.00
118. Attending to hear judgment, when reserved .50
119 Affidavit of disbursements, including copy and service..... 1.00
120. Each necessary copy of subpoena..... .50
121. Allowance to witnesses, the same fees and charges as allowed in civil cases.
122. Necessary disbursements paid to proper officers and postage, the same as allowed in civil cases.

N. B.—The judge may, in his discretion, allow an increased fee to counsel in a proper case.

Miscellaneous.

123. When it has been proved to the satisfaction of a judge or taxing officer that proceedings have been taken by solicitors to expedite proceedings, save costs, or in compromising actions, an allowance is to be made in the discretion of such judge or taxing officer.

124. Whenever a solicitor does any work, performs any service, or incurs any expense, not specially provided for in this tariff, he shall be allowed therefor such sum or sums as a judge shall by fiat direct.

125. Solicitors' fees in matters under the Crown Practice Rules shall be taxed on the supreme court scale in so far as the same is applicable.

126. In all actions for the enforcement of mechanics' liens in a district court where the amount recovered exceeds $500 solicitor and counsel fees shall be taxed on the supreme court scale.

Fixed Costs upon Judgments in Default.

Upon entry of judgment in default of appearance for a liquidated demand in ordinary cases, the following sums shall be taxed in satisfaction of all fees and disbursements other than taxable service fees:

	Supreme Court Scale	District Court Scale
127. When plaintiff's solicitor resides at the judicial centre in which judgment is entered—		
For one defendant	$26.00	$16.00
For each additional defendant against whom judgment is entered	2.00	1.25
128. When plaintiffs solicitor resides elsewhere than at such judicial centre—		
For one defendant	28.00	17.00
For each additional defendant against whom judgment is entered	2.00	1.25

In ordinary actions brought to recover a liquidated demand, when the defendant pays the whole amount claimed, with costs, to the plaintiff or his solicitor at any time before the time limited for appearance has expired, the following sums and no others shall be payable in respect of all fees and disbursements other than taxable service fees–

	Supreme Court Scale	District Court Scale
129. When plaintiffs solicitor resides at the judicial centre at which writ issued:		
For one defendant	$17.00	$10.00
For each additional defendant served	2.00	1.25
130. When plaintiff's solicitor resides elsewhere than at such judicial centre:		
For one defendant	18.00	10.50
For each additional defendant served	2.00	1.25

SCHEDULE II.

Fees of Registrars and Sheriffs.

REGISTRAR'S FEES.

The Supreme Court En Banc.	Supreme Court Scale	District Court Scale
1. Receiving appeal books and inscribing cause, except in criminal cases	$5.00	$3.00
2. Inscribing any reference, stated case, motion or other cause or matter, where no appeal books, except in criminal cases	2.00	1.00
3. Receiving and filing factums from each side	1.00	
4. Entering every final judgment of the court, including certifying copy for the court below, except in criminal cases, including all filings	4.00	2.00
5. Certifying case in appeal to Privy Council or Supreme Court of Canada, except in criminal cases	5.00	
For other services in any cause or matter before the supreme court en banc, except in criminal matters, such items of the supreme court and district court tariff as may be applicable shall be taken; the supreme court tariff being followed in cases originating in the supreme court en banc, the supreme court or before a judge thereof or before the master of titles; the district court tariff applying in all cases originating in a district court or before a judge thereof.		
In matters arising in a surrogate court or before a judge thereof the scale to be applied to services other than those above mentioned shall be the scale applicable in the court below.		
The Supreme Court and the District Courts.		
6. Upon entering cause and signing and sealing writs of summons or other originating process	$3.00	$2.00
7. Upon entry of appearance	2.00	1.00
8. Upon filing dispute note		.50
9. Upon final judgment or verdict	3.00	2.00
10. Upon every other judgment or order	1.50	1.00
11. Examining bond and affidavits thereon, when required to be approved by officer of the court	1.00	.50
12. Upon taxation of costs, including certificate on judgment or order, if any, per hour, except when a lump sum allowed, or costs fixed	2.00	1.50

	Supreme Court Scale	District Court Scale
13. For certificate of costs on judgment, when costs are fixed	$1.50	$1.00
14. Upon every subpœna, garnishee summons, writ of replevin, attachment or execution	2.00	1.50
15. Upon every renewal of a writ	.75	.50
16. Every search within one year, or when correct reference number is given	.25	.25
17. Every search beyond one year, if correct reference number not given	.50	.50
18. Every general search	.50	.50
19. Setting down every cause or matter for trial or argument in court, including swearing witnesses, jurors and filing exhibits	2.00	1.50
20. For letters of guardianship, commission or exemplification	2.00	1.00
21. Upon inquiry or taking accounts under order of reference, including certificate of result, per hour	2.00	1.50
22. Upon examination for discovery, examination or cross examination of witnesses, including swearing witnesses and certifying depositions if required, per hour.	2.00	1.50
23. Settling judgment, order or bond, upon appointment, per hour	2.00	1.50
24. Every appointment	.25	.25
25. Every certificate not otherwise provided for	1.00	.50
26. Certifying appeal book	5.00	3.00
27. Every amendment, whether by alteration or substitution	1.00	.50
28. Upon money being paid into court:		
Not exceeding $100.00	.50	.50
More than $100.00 and not exceeding $500.00	1.00	1.00
More than $500.00	2.00	2.00
29. For copied matter, when prepared by officer of the court, in addition to fee for certicate if required, per folio	.10	.10
30. For examining copies of instruments on file, when prepared by solicitor, in addition to fee for certificate, if required, per folio	.05	.05
31. Upon refusal of any application to the court or a judge, rejected for clerical or typographical errors in material; to be paid before return of the documents for correction and before renewal of the application	1.00	1.00

Not to be taken from a party acting in person, and in no case to be allowed in a solicitor's bill of costs.

The above fees for services include all necessary filings.

In appeals from summary convictions, cases stated under section 761 of The Criminal Code, and matters under the Crown Practice Rules.

32. For receiving and entering	$2.00	
33. Upon issue of subpœna, summons, rule, order or judgment, or process to enforce order or judgment	1.00	
34. For taxation of costs, including certificate if required	1.00	
35. Every other certificate	.50	
36. Every search	.25	
37. Every appointment	.25	
38. Copies of documents, when prepared in the office, in addition to fee for certificate if required, per folio	.10	
39. Examining copies of instruments on file, when prepared by solicitor, in addition to fee for certificate if required, per folio	.05	
40. Upon payment of money into court	.50	

Sheriff's Fees.	Supreme Court Scale	District Court Scale
41. For receiving, entering and indorsing every summons, writ and other process and every order or other document requiring service	$ .50	.25
Receiving and entering small debt summons	.25	
42. Every return of all processes and writs, except subpœna	.25	.25
43. Every affidavit of service, exclusive of fee paid commissioner, notary or J. P.	.25	.25
44. Paid oath	.25	.25
45. Fee on every service except subpœna	.50	.25
46. For service of summons on each juror and service of subpœna on each person named therein	.50	.25
47. Every warrant to execute any process, when given to a bailiff	.50	.50
48. For every arrest under warrant, bond required to be taken to the sheriff for securing goods attached, indemnity, or other purposes	2.00	2.00
49. For assignment of replevin bond	2.00	2.00
50. For executing every writ of possession or replevin	4.00	2.00
51. For delivering goods replevied or delivery of lands under writ of possession	4.00	2.00
52. For every search not being by a party to the cause or his solicitor	.25	.25

	Supreme Court Scale	District Court Scale
53. For every certificate when required	$ .50	$ .50
54. And for every certificate when required under seal, including search	1.00	1.00
55. For seizing estate or effects under attachment or execution	2.00	1.00
56. For notice of sale of goods	1.00	.75
Each copy, not exceeding seven	.10	.10
57. For notice of sale of lands	1.00	1.00
Each copy, not exceeding three	.25	.25
58. For every notice of postponement, including copies	.50	.25
59. For every schedule of goods taken in execution or seized under attachment, including copy for party whose goods are taken and seized (when not exceeding five folios)	1.00	1.00
Every folio over five	.20	.20
60. For making every affidavit (other than of service), besides fee paid out for oath	.50	.50
61. For mileage of every mile necessarily travelled and sworn to in serving and executing summonses, writs and other processes and papers of every description, from the place where the same are severally received or the sheriff's office (whichever is nearest) to the place of service or execution as aforesaid, and return	.12	.12
62. For poundage on executions and attachments in the nature of executions, when the sum realised shall not exceed $400, five per cent.; when the sum realised is over $400 and does not exceed $4,000, five per cent. for $400, two and a half per cent. for the balance up to $4,000; and when the sum realised is over $4,000, five per cent. for $400, two and a half per cent. from $400 to $4,000, and one and a quarter per cent. for the balance.		
63. Such sums as may be actually disbursed for advertising in such cases as is required by law, and for care and removal of property seized or taken, as may be approved (in each case) by the taxing officer.		
64. Where wrong address given by solicitor for service of process, and sheriff acts on such information, and service is not effected by reason of party to be served not to be found at the address or in the vicinity of it, actual expenses incurred to be paid by party in fault.		

	Supreme Court Scale	District Court Scale
65. When the goods to be sold consist of a merchant's stock, and where in the opinion of a judge it was necessary for the sheriff to employ the assistance of an expert in making an inventory and valuation, such sum may be allowed as is actually and reasonably disbursed for such assistance and as may be approved in each case by a judge. This shall apply also to allowance for disbursements in connection with writs of possession and replevin.		
66. Posting necessary notices and attending printer, each	$1.00	$ .75
67. For bringing up prisoner on attachment or habeas corpus, besides travel at 12 cents per mile, and disbursements and keep of prisoner, $2.00.		
Postage when necessary.		

SCHEDULE III.

Fees of Court Reporters, Witnesses, Jurors and Interpreters.

	Supreme Court Scale	District Court Scale
Court Reporters.		
1. For taking notes in civil cases upon examination for discovery, examination or cross-examination of witnesses, except in court or before a judge when extension not required, per hour	$1.00	$1.00
2. For transcription of notes and copying exhibits, etc., in civil cases, except when required by the department of the attorney general or a judge, per folio	.10	.10
3. For each carbon copy thereof in civil cases, except when required by the department of the attorney general or a judge, per folio	.05	.05
Witnesses and Jurors.		
4. For every day necessarily absent from residence in going to, staying at and returning from trial or other proceeding—		
When residence is within two miles of place of trial	$1.00	$1.00
When more than two miles	2.00	2.00
5. For every mile necessarily travelled by other means than railway	.10	.10
When railway used, the actual fare paid.		
6. For barristers and solicitors, physicians and surgeons, civil engineers, surveyors and architects, when called to give evidence in consequence of any professional services rendered by them, or to give professional opinions, per day	5.00	5.00
With mileage or railway fare in addition as for other witnesses.		
Interpreters.		
7. For each day necessarily engaged in travelling to, staying at and returning from trial or other proceeding	$2.00	$2.00
With mileage or railway fare in addition as for witnesses and jurors.		

SCHEDULE IV.

FEES TO JUSTICES, SOLICITORS, REGISTRAR AND CLERK, UNDER SECTION 761 OF *The Criminal Code.*

1. To the justice for preparing and stating a case when not exceeding ten folios of 100 words each. $1.00
   For each folio in excess of ten folios ..... .05
2. To the registrar or clerk of the court (as the case may be) for receiving, filing and entering a case and attending on the argument and judgment.. 2.00
3. To the registrar or clerk on every process or order. .50
4. To the solicitor on argument 2.00
   To be increased by the court or the judge (as the case may be) to a sum not exceeding $10.00.
5. Affidavit of service (including attendance and fee to commissioner) ..... .50
6. All necessary affidavits (except affidavit of service). This fee to include attendance to have sworn and commissioner's fee 1.00
   If over five folios, for each additional folio ..... .15
7. Attending court or judge for rule or summons 1.00
8. For drawing rule or summons ..... .50
9. Copy of rule or summons ..... .25
10. Attending to serve rule, summons, order or other document ..... .25
11. Counsel fee on return of rule or summons 2.00
    To be increased by a court or judge to a sum not over 5.00
12. Drawing rule absolute or order 1.00
    If exceeding five folios, each additional folio of 100 words ..... .15
13. When service of any process or paper made through the sheriff's office, mileage to be allowed one way, per mile ..... .20
14. Fee on each rule, summons or order 1.00
15. Fee on each rule, summons or order, to registrar or clerk ..... .50

Affidavits may be sworn before any judge, notary public or justice of the peace.

Recognisance.

16. Drawing and completing recognisance and delivering to justice, including all attendances and oath.. $1.00

The foregoing Rules and Tariff will come into force and take effect upon the first day of January, A. D. 1912, from which time all Rules and Tariffs now existing relating to the same matters shall be rescinded.

INDEX

CASES STATED (under Section 761 of The Criminal Code) PAGE

amendment of case stated ... 173

application for stated case to be in writing ... 172
how delivered to justice ... 172
time for within seven days ... 172

case to contain what ... 172
not to be delivered unless costs paid, etc ... 172
to be filed ... 173
to be heard at next court en banc sittings ... 173

court en banc ... 172-173

delay in filing ... 173

effect of judge's order ... 173

hearing by judge in chambers on appointment ... 173

judge in chambers may hear ... 172-173

judge's order, how enforced ... 173

justice refusing to state case ... 172
shall state case ... 172
time for justice to act ... 172

notice of appeal ... 173

notice of time of hearing to be given ... 173

recognisance to be given ... 172
to be sent to registrar by justice ... 174

rules for proceeding before judge ... 174

slight deviations not to invalidate proceeding ... 174

CONVEYANCE OF PRISONERS UNDER SENTENCE TO GAOLS, RULES FOR

prisoner may be conveyed to gaol without warrant ... 175
application to what cases ... 175
duty of gaoler in such cases ... 175

CROWN PRACTICE RULES

certiorari
application made on notice of motion ... 163
to whom made ... 163
time for not after six months ... 164
conviction or order may be quashed on return ... 163
may be quashed on return of notice or order nisi conviction ... 163
notice of motion for writ ... 163
powers of court or judge ... 164
quash without actual issue of writ ... 164
discharge prisoner absolutely on giving security ... 164
private prosecutor to be served in some cases ... 163-164
security to be given ... 163
may be dispensed with ... 163-164
unless dispensed with ... 163
service on whom necessary ... 163
time to apply ... 164

custody of papers
registrar of court en banc to have ... 163

general rules
application to judge in chambers, in court or to court en banc for 168
prerogative writ of mandamus ... 168
quo warranto information in nature of ... 168
writ of certiorari or order to quash ... 168

CROWN PRACTICE RULES—*Continued.*

general rules—*Continued.*
application to judge in chambers, etc., *Continued*— PAGE
writ of habeas corpus ... 168
writ of prohibition ... 168
contempt ... 169
costs ... 169
English crown rules and practice to apply ... 171
English forms to apply ... 171
intituling ... 169
registrars' fees ... 170
service of writ similar to writs of summons ... 168
copy to be served ... 168
original to be shown if demanded ... 168
setting down for hearing ... 169
defendant may apply after two months ... 169
notice of motion for ... 169
supreme court rules to apply ... 169
registrar to take place of local registrar ... 169-170
title, short ... 171

habeas corpus
attachment for contempt ... 168
disobedience to writ of ... 168
judge may grant ex parte order for immediate issue of writ ... 168
judge may order prisoner's discharge forthwith ... 168
punishment for disobedience to writ ... 168
return of writ, contents ... 168
amendment of ... 168
to be made before motion to discharge ... 168

judgment by default may be entered ... 167
manner of obtaining ... 167
time to plead may be extended by order ... 167-168

mandamus
affidavit required ... 167
applicant obtaining judgment entitled to peremptory writ ... 166
costs ... 165
no action against person obeying writ ... 166
notice of motion, upon whom to be served ... 165
order need not be served ... 165
peremptory writ ... 166
pleadings in ... 167
time for and manner of ... 167
point of law only ... 166
proceedings for benefit of another person ... 166
service of notice on whom ... 165
time for and manner of pleading ... 167
where nominal party dies ... 166
who may show cause ... 165
writ to bear date of issue ... 166
when returnable ... 166
return to ... 166

pleadings in mandamus ... 167
time for ... 168

pleadings in prohibition ... 167
time for ... 168

pleadings in quo warranto ... 167
time for ... 168

quo warranto
affidavit necessary ... 164
costs ... 164-165
defendant may file disclaimer ... 165
informations may be consolidated ... 165
leave must be obtained ... 164
no quo warranto without leave ... 164
objections to be specified in notice ... 164
not specified cannot be raised without leave ... 164

CROWN PRACTICE RULES—*Continued.*

quo warranto—*Continued.* PAGE
pleadings in 167
defendant may plead.....
judgment of ouster..... 167
reply 167
time for 167
relator 164
new relator may be substituted..... 165

DISTRICT COURT RULES

claims liquidated under $100. (*See* small debt procedure)

fees 295
clerks 313-315
default judgment 312
interpreters 318
jurors 318
reporters 318
sheriff 315-317
small debt tariff.....302-303
solicitors 305-312
witnesses 318

forms, summons A and B and dispute note.....300-301

rules of supreme court apply mutatis mutandis..... 295

small debt procedure
action, entry of..... 295
address of parties..... 295
affidavit of service, form of..... 301
claims for debt up to $100..... 295
particulars of 295
clerk's fees 298-299-302
costs (*See* fees) 297
counterclaim .....
delivery of summons by clerk as directed..... 296
dispute, plaintiff to be notified of..... 296
note, form of..... 301
notice of 297
striking out 297
entry of action..... 295
execution 297
fees, clerks' 298-299-302
commission evidence 299
interpreters 299-303
sheriffs 298-299-303
solicitors 298
witnesses 299, 303
general procedure, application of..... 299
indorsement of process unnecessary..... 299
informalities, not to avoid..... 299
interpreters' fees 299, 303
issue of summons..... 295
judgment by default..... 296
setting aside 297
particulars of claim..... 295
service of notices, etc..... 298
out of jurisdiction, order for, when not necessary..... 296
set off or counterclaim..... 297
sheriff's fees 298-299, 303
solicitors' fees 298
striking out dispute..... 297
summons A and B forms.....300-301
summons, issue of..... 295
returnable time for..... 296
return to clerk after service..... 296
suit erroneously brought in general procedure, costs..... 298

tariff of fees.....302-303

DISTRICT COURT RULES—*Continued.* PAGE

time for dispute ... 296

trial, notice of ... 297
representation of parties at ... 297
postponement, application for ... 298
setting down for ... 297

witness fees ... 318

SUPREME COURT RULES

abatement. (*See* change of parties)
certificate to be given by advocate ... 21
none where cause of action continues ... 20

accountants, judge may obtain assistance of ... 127

accounts, actions for ... 64
reference compulsorily ... 64
affidavit to verify ... 65
application for order, how made ... 64
books of, when prima facie evidence ... 64
certifying accounts ... 66
delay in taking proceedings on ... 65
direction to take ... 64
numbering ... 64
special ... 65
disputed items only to be brought before judge ... 65
exhibit to affidavit, to be made ... 64
filing certificate ... 67
just allowances, in taking ... 65
local registrar's certificate ... 66
documents not to be set out in ... 66
settlement of ... 66
mode of taking, special directions as to ... 64
motion to vary before eight days ... 67
motion to vary after binding certificate ... 67
numbered consecutively, item in, must be ... 64
numbered and form of ... 65
originating summons for ... 124
receiver. (*See* receiver) ... 105
surcharge, notice of intention to ... 65
special directions ... 64
taking, mode of ... 65
taking the opinion of the judge ... 66
undue delay in taking ... 65
verification of ... 64
vouching, mode of ... 65

Act, the meaning of ... 162

action, dismissal for want of prosecution ... 48, 49

action against public officers, limitation, venue, etc ... 152
notice of ... 152
commencement of ... 1

address for service ...
defendants, on appearance ... 24
omission of ... 24
illusory or fictitious, appearance of may be set aside ... 24
plaintiff's, to appear on writ ... 3
omission of ... 3

address of defendant to accompany appearance ... 24
plaintiff and advocate to be indorsed on writ ... 3

adjournment to chambers ... 121, 122
to court ... 122

administration
originating summons for ... 124
administrator, by ... 64
actions for, conduct of ... 64
default of appearance in ... 26
originating summons, by ... 124
parties to ... 14
service out of jurisdiction in ... 6

SUPREME COURT RULES—*Continued.*

administration—*Continued.* PAGE
advertisement for claims ... 127
attendance of administrators on claim against estate in administration, proceedings in ... 17
claims, notices to send in ... 127
creditors' claims in, who to appear on ... 17
on others, order to send in claims ... 127
distribution not to be delayed by difficulty as to some shares ... 143
heirs, etc., unascertained or absent ... 14
judgment for at instance of executor, administrator or trustee ... 15
legatee or person interested in land ... 14
residuary devisee or heir ... 14
residuary legatee or next of kin ... 14
notice of, form ... 16
service of ... 16
effect of ... 15
memorandum of ... 16
legal personal representatives only, to appear on claims against estate in ... 16, 17
not to be ordered in some cases ... 125
originating summons for ... 124
appointment of new trustee ... 126
determination of matters relating to ... 124, 128
construction of written instruments ... 126
evidence necessary ... 126
persons to be served ... 126
vesting order ... 126
parties in, representation of ... 16, 17
parties to actions for ... 14
representation of parties in ... 16, 17

administrators. (*See* administration)
action by or against on behalf of estate ... 10
administration at suit of ... 15
attendance of on claim against estate in administration ... 17
opinion, advice or direction of judge, application for ... 127
originating summons by ... 124

admissions of facts, form of notice of ... 63

admissions, amendment of ... 63
each of other party, of, notice ... 62
costs of proving what ought to be admitted ... 62
occasioned by refusal to admit documents ... 62
denial not specific, where ... 33
documents, of ... 62
party may be required to make ... 62
notice for ... 62
costs of unnecessary ... 62
verification of signature of ... 63
effect of limited to immediate purpose ... 63
evidence of ... 63
facts, of, notice to make ... 62
time for ... 62
notice of ... 62
party may call on other party to make ... 62
pleadings, on the ... 62
refusal of ... 62
effect of on costs ... 62
verification of signature to ... 62
judgment on ... 63
application for ... 63
notice in writing of ... 62
payment into court, by ... 39
pleading, by ... 62
insufficient denial in ... 33
persons under disability, exception ... 33
signature to, affidavit of ... 63
service of, by advocates ... 8
subsequent proceedings, effect of, on ... 63

SUPREME COURT RULES—*Continued.*

admissions, etc.—*Continued.* PAGE
time for ... 62
withdrawal of ... 63

advertisement
creditors and claimants, for ... 127
excluded from benefit of judgment on failure to prove after ... 127
originating summons, notice of, by ... 126
signature of ... 127
substituted service by ... 6

advocate
abatement of action, to give notice of ... 21
acceptance and admissions of service by, evidence of ... 8
address to be furnished on issue of writ by ... 1
address to be indorsed on writ ... 3
for service when required ... 3
omitted, service in case ... 3
change of, how effected ... 4
disclosure as to whether writ issued with his authority ... 4
employment of, after party acting in person ... 4

affidavits
accounts, verifying ... 643
address of deponent in ... 81
alterations in ... 82
answer, in ... 82
application for summary judgment on ... 29
attachment of debts, for ... 98
goods, for ... 107
belief, when it may be stated in ... 80
blind persons, by ... 82
certified copy may be used ... 82
chambers, in ... 80
previously used ... 83
commencement of ... 80
contents of ... 80
copies, certified, may be used ... 82
costs of improper matter in ... 81
informal ... 81
cross examination ... 75, 80
defective, judge may receive ... 82
deponents by two or more ... 81
description and address of ... 81
to be stated in ... 81
signed by, to be ... 81
documents of. (*See* discovery) ... 53
erasures in ... 82, 83
evidence may be given by, when ... 80
by order ... 72
under agreement ... 72
exhibits to ... 83
certificate upon ... 83
facts to be deposed to by ... 80
filed before using ... 82
filed before issue joined not to be used at trial without notice ... 76
filing of ... 81, 82
time for ... 82, 83
after ... 82
form of ... 81
illiterate persons, by ... 82
information and belief on ... 80
interlineations in ... 82
interlocutory motions on ... 80
interpleader ... 112
jurat to, form, in case of blind or illiterate person ... 82
knowledge, not belief, to be sworn to except on interlocutory motions ... 80
motion, evidence on, by ... 80
on ex parte applications, must be sworn before order ... 83

SUPREME COURT RULES—*Continued.*

affidavits—*Continued.* PAGE

paragraphs in, to be numbered ... 81
particular fact at trial ordered to be proved by ... 72
reply, in ... 83
scandal in, striking out ... 81
costs of application for ... 81
served, to be, when ... 117
service, of, contents of ... 83
swearing of, before whom ... 80
abroad, before whom ... 80
before whom not to be taken ... 82
time and place to be express ... 80
title of ... 80
transmitting from chambers after motion ... 81

amendment of pleadings
manner of ... 52
appeal, on ... 129
of notice of ... 129
application for leave for ... 52
clerical mistakes ... 53
costs of, generally ... 53
counterclaim, of ... 51
disallowance of improper ... 52
failure to make after order ... 52
general power to amend ... 53
judgments, of ... 53
leave, by ... 52
without ... 51
notice of appeal, of ... 129
order giving leave for ... 52
not to be drawn up ... 119
orders, of ... 52, 53
parties, as to ... 9
pleadings of ...
appeal on ... 129
counterclaim, without leave ... 51
costs of ... 53
dates of order and of ... 52, 53
defendant, by ... 51
delivery, on ... 53
disallowance of ... 52
leave, by, at any stage, on terms ... 52
plaintiff may make once without leave ... 51
pleading after ... 52
statement of claim without leave ... 51
striking out ... 52
time for ... 52
powers of ... 51, 53
proceedings, defect in ... 53
terms, on ... 53
third party, procedure in ... 18

appeal, court en banc to. (*See* court en banc) ... 128
taxation of costs, from ... 144
sheriff's costs, from ... 97
from local master ... 124

appearance
action for recovery of land, in, as landlord ... 25
person in possession ... 25
addresses to be given with ... 24
by persons not parties ... 37
default of. (*See* default of appearance) ... 26, 29
defendant, entry by ... 23, 25
time for ... 2
several, some appearing, others not ... 27
several, some served, others not ... 27
entry in procedure book ... 24
form of ... 24, 26

SUPREME COURT RULES—*Continued.*

appearance—*Continued.* PAGE

how entered 24
landlord not named in writ, by 25
more than one defendant appearing by same solicitor 25
notice of appearance 24
partners, by. (*See* partners) 12, 13, 14
person, not a party by 25
served with notice of judgment by 16
protest under 14
recovery of lands, in actions for 25
by person not party 25
limiting defence, notice of 25
service, setting aside, before 26
several defendants, some appearing, others not 27
served others not 28
striking out. (*See* summary judgment) 29
third party, by. (*See* third party) 17
time for, to writ of summons 2
may be shortened 2
for service out of jurisdiction 28
where defendant appears after time for expired 25
writ, setting aside, before 26

assignment. (*See* change of parties) 20
estate, pendente lite, of 20
carrying on procedings after 20

attachment of debts 98, 102
affidavit for 98
application to set aside 99
costs, liability of garnishee 101
defendant 101
of garnishee, payment of 99
delay of plaintiff 100
debts owing firm may be attached though one member abroad 98
execution against garnishee 100
stayed till debt due by garnishee 101
exemptions from 101, 102
exception 101
payment out of 101
garnishee summons, when issuable 98
affidavit for 98
default by 100
dispute by 100
issue as to indebtedness of 100
discharge by payment or levy 101
judgment against garnishee 100
payment out of moneys paid in by garnishee 99
Saskatchewan government, garnishment against 99, 100
service on 100
service of summons, effect of 99
manner of 99
on defendant 99
setting aside 99
for nonprosecution 100
suggestion of claim by third party 100
third party, claim by 100
procedure on 101

attachment of goods
affidavits for writ 106, 107
cases where issuable 107
delay by plaintiff 108
exemptions where no family remaining 107
perishable goods disposal of 108
plaintiff to give security in certain cases 109
return of goods on security furnished 108
service of writ 107
security to be given by plaintiff, when 108
release of goods when given by defendant 108

SUPREME COURT RULES—*Continued.*

attachment of goods—*Continued.* PAGE
setting aside ... 108
sheriff, return and inventory of ... 107
duty of ... 108
subsequent proceedings ... 108

attorney general
questions as to validity of Ordinances, pleadings, etc., to be served on ... 17
entitled to be heard on argument ... 17

audita querela, abolished ... 91

award
motions to enforce or remit, requirements ... 117

bills of exchange
joinder of parties to as defendants ... 10
loss of, defence of not permitted when indemnity offered ... 35

cash under control of court. (*See* funds in court)

cause abated one year to be struck out ... 22
conduct of, judge may give, when ... 15

cause of action
joinder of ... 22

cestuis que trusts
execution of trust, anyone may have judgment for ... 15

chamber clerk, duties of ... 122

chambers
proceedings in ... 121
adjournment of motion, further notice unnecessary ... 121
costs thrown away by nonattendance ... 121
default in attendance, proceeding ex parte ... 121
ex parte proceedings where party fails to attend ... 121
reconsideration of ... 121
terms ... 121
motions. (*See* motions and applications) ... 117
orders, date of ... 119
need not be drawn up, when ... 119
varying ... 128
originating summons, by. (*See* originating summons) ... 119
proceeding failing by nonattendance of party, costs ... 121

change of solicitor ... 4

change of parties ... 21
solicitor for plaintiff to certify ... 20
assignment, creation or devolution of estate pendente lite ... 20
capacity of party, change of ... 20
cause of action, surviving or continuing ... 20, 21
death of parties ... 21
failure to proceed on ... 20
marriage of party ... 20
order to carry on proceedings ... 20
application for ex parte ... 20
service of ... 20, 21
appearance by person served ... 21
effect of ... 21
discharging or varying ... 21
when person not under disability ... 21
when person under disability ... 21
default of application for ... 21
persons interested coming into existence after action ... 20
successor made party on ... 20

chattel, order for delivery of specific claimed under lien or payment into court ... 103

class
representation of, in suit ... 10
representation of unascertained ... 14

commission from British tribunal, rules as to deputy attorney general to make application in certain cases ... 79

SUPREME COURT RULES—*Continued.* PAGE

concurrent writ. (*See* writ of summons) 2
conduct of proceedings, judge may give to party, when 15
confession of defence 45
constitutional questions, notice to be given attorney general where Ordinances questioned 17
contribution or indemnity
defendant claiming against third party 17
defendant 19
corporations, service of writ on 5
costs
administration, etc. 140
amendment of plaintiff's pleadings 148
application to extend time 147
ascertaining persons entitled 143
attendance of parties on taxation 148
award, costs on 144
bills of costs, form of 144
briefs, premature delivery of 149
cases where solicitor may be deprived of or ordered to pay costs .. 142
copies of documents, allowance of 10c folio, etc 146
defendant's costs where trial comes on but action cannot be tried 149
delay bfore taxing officer 149
delivery of pleadings, etc., when same solicitor 145
delivery of bill to client where costs to be paid out of a fund 149
disallowances where bill reduced one-sixth 149
disallowance of costs, improper, vexatious or unnecessary matter 146
discovery of, examination for 61
discretion of court as to 140
district court, where limited to 142
drawing affidavits and attending deponent 145
event, follow where trial by jury 140
evidence on commission or en juris discovery 145
executors, trustees, guardians, etc., compensation to 140
fees of accountants, etc 149
fees, payable in advance in certain cases 144
folio to be 100 words 146
future costs in administration matters 143
general regulations 145
gross sum for costs on interlocutory applications 144
guardian ad litem, solicitor of 141, 142
judge may authorise other fees 142
improperly or fruitlessly incurred 142
indorsement on bill of costs 150
inquiries as to share 143
inspection of documents 146
interpreters 144
issues, of 140
jury 140, 144
local registrars 142
neglect of solicitor, cause of, personally liable 141
nonattendance or neglect of parties on proceedings in chambers .. 145
occasioned by denial or nonadmission of facts 37
out of the estate 143
party and party, costs between 148
perusals when same solicitors 145
plaintiff refused costs of his amendments 148
power of taxing officer to limit or extend time 150
power of taxing officer to assess costs at gross sum in some cases 149
review to apply to this also 149
refusal or neglect to procure taxation 148
registrars', etc., fees 144
removal of cause from district court 141
security for
bond by, to whom given 141
cases in which ordered 141
manner and time of giving 141
separate answers or proceedings by same solicitor 145

SUPREME COURT RULES—*Continued.*

costs—*Continued.* PAGE
service of writ of ... 4
set off of costs ... 146
for damages or costs ... 143
sheriffs ... 142
sheriff's fees ... 142
solicitor's fees ... 145
solicitor may be deprived of or ordered to pay, when ... 142
special allowances ... 145
summary judgment ... 31
tariff. (*See* tariff) ...
taxation of, notice of ... 144
not necessary when ... 144
review of ... 144
evidence on ... 144
taxation where action, etc., dismissed with costs ... 148
taxing officers, powers ... 147
third party procedure, in ... 19
unnecessary appearance in court or chambers ... 147
unnecessary prolixity in pleading ... 31
where not exceeding $500 recovered in action district court costs only allowed ... 142
defendant's costs in such cases ... 142
where total of costs taxed to be stated ... 148
witnesses ... 144

counterclaim. (*See* pleading)
amendment of, without leave ... 51
cross action, same effect as ... 32
defence of matter arising pending the action ... 44
defendant may set up ... 32
discontinuance, effect on ... 38
of ... 51
dismissal of action, effect on ... 38
excluding counterclaim in some cases ... 37-38
exclusion of ... 32
judgment on ... 38
default of appearance by plaintiff at trial ... 70
matters arising pending the action ... 44
misjoinder of plaintiffs, effect on ... 9
must state specifically ... 37
payment into court on ... 42
plaintiff improperly joined, against ... 9
pleading ... 32
proceedings on, where action stayed ... 38
reply to counterclaim ... 37
service on persons not parties ... 37
matter arisen pending action ... 44
stay of action, effect of ... 38
striking out ... 51
striking out if not convenient to be disposed of in action ... 32
time for delivery ... 37
title of counterclaim against person other than plaintiff ... 37
indorsement on such ... 37
withdrawal of ... 51

court en banc ... 128
adjournment of sittings ... 128
quorum not present, when ... 128
appeal book, approval of before printing ... 134
appeal not heard if poor printing ... 134
certified ... 133
copies to be delivered to opposite party ... 135
costs of printing may be disallowed ... 134
filing, etc. ... 133
how printed ... 134
not to be filed with leave if printed other than according to rules ... 134
number of to be filled ... 134
proof not properly corrected ... 134

SUPREME COURT RULES—*Continued.*

court en banc—*Continued.* PAGE

appeal lies, when ... 128
general powers of court on ... 128
to be entered first opportunity ... 132
appeal to be inscribed on a list in certain order ... 136
appeal to court below when possible ... 132
appellant to file and deliver printed copy of appeal book ... 133
arguments not in factum may be allowed, also points of law ... 136
cases in which appeal lies ... 128
common motions ... 136
first day of sittings to be common motion day ... 136
consent judgments not appealable except by leave ... 128
judgments as to, not appealable except by leave ... 128
security for, when required ... 129
court may refuse to hear party whose factum does not follow rules 135
district court appeals, rules as to ... 131
default in entry of appeals, etc. ... 132
entry of appeals, etc., to be made promptly ... 132
evidence, further, on appeal ... 129
when question of fact involved ... 131
evidence, how given ... 131
ex parte order may be appealed to court en banc ex parte ... 130
factums: contents of ... 135
judge may dispense with delivery or vary time for ... 136
may be printed or typewritten ... 135
not to contain irrelevant matter ... 136
parties to deliver factums to opponents ... 135
registrar to report default in ... 136
registrars to keep first copies received under seal ... 135
registrar not to accept unless conforming to rules ... 135
six copies to be deposited ... 135
grounds for new trial ... 129
interlocutory orders not to prejudice appeal ... 131
judge, to whom application should be made, becoming unable to act, procedure ... 132
judgment of, delivery by one judge ... 132
jurisdiction in appeal ... 128
local registrar may be directed to produce original papers ... 136
new trial, may be asked alternatively ... 130
in case of substantial miscarriage ... 129
on any one question ... 129
of part of action ... 129
notice of appeal, amendment of ... 129
contents ... 128
time for service ... 129
service on whom ... 129
notice by respondent to contend that order appealed from may be varied ... 130
time for ... 130
order nominating judge to act in place of one who has died or retired ... 132
powers of ... 129
questions as to rulings of judge below ... 131
security for costs, when ordered ... 129
single judge may deliver judgment of court or other judge ... 133
stay of proceedings pending appeal ... 132
notice of appeal not a stay ... 132
trial judge not to sit on ... 128

creditors
administration action by ... 124
advertisements for ... 127
claims in chambers by ... 127
omission to file claim in time, exclusion ... 127

cross examination. (*See* affidavit, trial)

damages, ascertainment of, default of appearance in ... 27
assessment of, continuing cause of action ... 67
default of appearance in action for ... 27

SUPREME COURT RULES—*Continued.*

damages, etc.—*Continued.* PAGE
defence to action for ... 33
inquiry as to ... 67
pleading as to ... 33
reference to officer of court to ascertain ... 67
death of parties. (*See* change of parties) ... 20
action not to abate on ... 20
after verdict, entry of judgment ... 20
default of appearance to originating summons ... 29
default of appearance
affidavit of service to be filed before proceedings on ... 26
defendants, several, some served others not ... 27
defendants, several, some appearing others not ... 27
hearing, at ... 70
infant or person of unsound mind, by ... 26
judgment upon, administration or partition action in ... 28
damages, in case of claim for and liquidated demand ... 27
mode of ascertaining ... 67
defendants not served, where some ... 28
detention of goods, claim for ... 27
land, recovery of, in action for ... 28
and damages ... 28
and mesne profits ... 28
liquidated demand, in case of claim for ... 27, 26
several defendants, default by some ... 27
mortgage, lien or charge, in actions respecting ... 28
setting aside or varying ... 28
third party against ... 18
motions, notice of, in case of ... 118
pleadings, delivery of, by filing in ... 25
proceedings on, in actions not specially provided for ... 28
service, indorsement of, on writ not necessary ... 6
of motions, in case of ... 118
substitutional, proof of claim, in case of ... 8
third party, by ... 18
trial at ... 70
writ of summons to be filed on ... 26
order dispensing with filing ... 26
default of pleading, close of pleadings on ... 39
defendant, by, where action for debt or liquidated demand ... 46
several defendants ... 46, 48
detention of goods and damages ... 46
several defendants ... 46
recovery of land ... 47
with claim for mesne profits, etc ... 47
where defence to part only of claim ... 47
other cases ... 47
entry of judgment, in ... 46, 48
issue, by parties to ... 48
judgment on, setting aside ... 28, 48
reply, by nondelivery of ... 39
third party, by ... 48
defendant. (*See* parties)
adding ... 11
added, service on ... 26, 1, 24
address of ...
appearance by ... 23
claiming contribution or indemnity against other defendant ... 17
third party. (*See* third party) ... 17
codefendants, questions between, not to delay plaintiff ... 19
costs of where plaintiff improperly joined ... 9
counterclaim by ... 32
death of. (*See* change of parties) ... 20
default of appearance by. (*See* default of appearance) ... 26, 29
discontinuance by ... 50, 51
firm, carrying on business, as service on ... 5
jurisdiction, out of, issue of writ against ... 6

SUPREME COURT RULES—*Continued.*

defendant—*Continued.* PAGE

marriage of. (*See* change of parties) ... 20
not interested in all relief claimed ... 9
payment into court by ... 39
representative capacity of to be shown in writ ... 10
residence of to be given in praecipe for writ ... 1
service of writ on ... 4
substitutional ... 6
third party added by ... 17
who may be joined as ... 9

defence. (*See* pleading)

actions for debt or liquidated demand on contract, to ... 36
actions on bills, cheques, etc., facts must be denied, to ... 36
amendment ... 51, 52
confession ... 45
judgment for costs on ... 45
contents of ... 31
costs occasioned by denial or new admission of facts ... 37
counterclaim by way of ... 32
counterclaim must be stated specifically. (*See* counterclaim) ... 37
damages, pleading to claim for ... 33
debt where denial of inadmissible ... 36
denial of representation must be specific ... 36
delivery of ... 23
default in ... 26, 29
time for ... 23
filing, time for ... 23
further and better ... 32
leave to put in under order X ... 30
limiting in action for recovery of land ... 25
matter arising pending the action ... 44, 45
no defence of common employment ... 38
no denials necessary as to damages ... 36
part of claim only, to ... 47
particulars of ... 32
payment into court before and with ... 39, 40
pleading, rules of ... 36
service of ... 23
statement of, contents ... 31
striking out ... 39, 35
for noncompliance with order for discovery, etc ... 56
tender before action, of ... 40
time for delivery of ... 37
enlargement of ... 108, 23
to action for recovery of land when defendant in possession ... 38
withdrawal of ... 51

defendant, striking out appearing defendants ... 27

demurrer not allowed ... 45

discontinuance

costs of action on ... 50
counterclaim may be proceeded with after ... 38
defence before ... 50
defendant by, by leave ... 51
entry for trial, after ... 51
judgment for costs on ... 51
leave of court for ... 50
notice of ... 50
order of judge, by ... 50
plaintiff by ... 50
stay of new action brought before payment of costs of discontinued action ... 51
subsequent action, when no defence to ... 51
taxation of costs on ... 51
terms for withdrawal of defence ... 51
withdrawal by consent ... 51
of defence ... 51

SUPREME COURT RULES—*Continued.*

discovery, examinations for — PAGE

- appeal from order of examiner ... 59
- appointment, for issue of ... 57
  - nonattendance on ... 59
  - service of ... 57, 59
- assignor of chose in action may be examined ... 57
- bodies corporate, officers of ... 56, 57
- certified copies of depositions and documents ... 58
- compelling attendance for ... 56, 57
- conduct money to be paid ... 57
  - of examination mode of ... 56, 59
- copies of documents to be taken, when ... 58
- corporations, officers of ... 57
- costs of, inquiry as to ... 61
  - objections by witness ... 59
- cross examination and re-examination ... 58, 59
- depositions, certified copy, effect of ... 60
  - filing of ... 60
  - form of ... 59
  - taken in shorthand, when ... 60
    - form and completion ... 60
  - to be read over and signed ... 59
  - witness refusing to sign ... 60
- documents, inspection of by examiner ... 59
- documents, order for ... 55
  - affidavit of ... 55
  - production of, on, witness refusing to part with, copies to be taken ... 58
- evidence, use of examination in ... 61
- examination, before whom to take place ... 57, 58
  - costs of, inquiry as to ... 61
  - explanatory ... 58
  - further on party's own behalf ... 58
  - party united in interest, of ... 58
  - rules of ... 57
  - where to take place ... 57, 58
- examiner, who to be ... 57, 58
  - appeal from order of ... 59
  - may make special report ... 60
- explanatory examination ... 58
  - officer of body corporate ... 58
- jurisdiction, out of ... 58
- medical examination in action in respect of bodily injury ... 62
- notice to produce documents on ... 58
- objections by witness, costs of ... 59
  - decision of ... 59
  - to questions ... 59
  - to be recorded ... 59
- officer before whom to be held ... 57, 58
- officers of bodies corporate, of ... 56
- order of examiner, appeal from ... 59
- order special, not necessary for ... 56, 57
- out of jurisdiction ... 58
- particular questions and answers ... 60
- parties liable to examination ... 56, 57
- party united in interest with person examined ... 58
- penalty for nonattendance on ... 59
- person beneficially interested ... 57
- place of examination ... 55, 58
- production of documents on ... 59
- re-examination and cross-examination ... 58
- refusal to attend for examination ... 59
- return of depositions to court ... 60
- rules for examination ... 57
- shorthand, use of, on ... 60
- special order for, not necessary ... 56
- subpoena for, issue of ... 57
  - disobedience to ... 59

SUPREME COURT RULES—*Continued.*

discovery, etc.—*Continued.* PAGE

time examination may take place ... 57
trial, use of depositions in evidence at ... 61
use of examination at trial ... 61
witness, conduct of, report of examiner on ... 61
punishment of ... 61
fees ... 57
nonattendance, penalty ... 59
objections by ... 59

discovery (and inspection) of documents ...
affidavit of ... 53
application for, ex parte on praecipe ... 53
attachment for failure to comply with order for ... 56
by and from whom obtainable ... 53, 54
decision of question prior to ... 56
default in making ... 56
defendant, when required from ... 53
documents, of ... 53
affidavit of ... 53
default in filing ... 56
documents, affidavit of, objection to produce to be taken in ... 53
application for ... 53
order for ... 54
inspection. (*See* documents) ... 54
noncompliance with order for ... 56
order for, service on solicitor ... 56
parties from whom required ... 53
plaintiff, when required, from ... 53
production ... 54
reserving, pending decision of question ... 54, 56
service of order on solicitor ... 56
time for, by defendant ... 53
by plaintiff ... 53

discovery in aid of execution ... 78, 97, 98
books and documents, production of ... 98
conduct money of person examined ... 98
corporation, officer of, examination ... 97
costs of examination ... 98
difficulty in enforcing judgment other than for money ... 97
disobedience to order ... 98
examination of judgment debtor or ... 97
officer of corporation ... 97
clerk or former employee ... 97
transferee of debtor's property ... 97
rules of ... 98
nature of examination ... 97
use of examination ... 97

documents, production of. (*See* discovery) ...
admissions of ... 62
affidavit of. (*See* discovery) ... 53, 54
cost of proving after refusal to admit ... 62
discovery of ... 53
examination for discovery, production on ... 58, 59
inspection of, application for ... 54
bank and trade books ... 54
default in giving notice of time for ... 54
notice for, fixing time for ... 54
order for ... 55
persons to whom allowed ... 54
time for ... 54
notice to admit ... 62
effect of on costs ... 62
notice to inspect form ... 54
notice to produce form of ... 63
costs of unnecessary ... 63
form of ... 62
inspect time for ... 54
produce on examination for discovery ... 58

SUPREME COURT RULES—*Continued.*

documents, etc.—*Continued.* PAGE
privileged documents may be inspected by judge ... 55
pleaded, how ... 34
inspection of ... 54
production of ... 54
bankers' books etc. ... 54
default in, after notice ... 55
examination for discovery on ... 58, 59
noncompliance with order for ... 56
notice for ... 54
order for ... 55, 73
service of ... 56
penalty on nonafter order ... 56, 73
place of ... 54
possession or power of party, in ... 54
referred to in affidavits or pleadings ... 54
verified copies ... 55

engineers, judge may obtain assistance of ... 127
forms used in ... 152

evidence ...
admissions of service by solicitors ... 8
affidavit, by, of particular fact ... 72
except where cross examination bona fide required ... 72
cross examination ... 76
certified copies may be used ... 76
copies of records, etc., certified by local registrar ... 72
documents, impounded, removing ... 73
documents, registrar may require attorney general's leave before producing ... 73
examiner, may be taken by ... 72
to be sworn ... 72
examination of witnesses, order for ... 73
viva voce or by interrogatories ... 73
giving in evidence ... 73
witness entitled to conduct money ... 73
disobedience to order ... 73
copy proceedings for examiner ... 73
conduct of ... 74
mode of taking depositions ... 74
disobedience of witness ... 74, 75
objections by witness ... 74
return of depositions ... 75
special report by examiner ... 75
use of depositions in evidence ... 75
examiner may administer oaths ... 75
for use in proceedings in cause ... 75, 76
cross examination on affidavit ... 76
notice of intention to use at trial depositions taken before issue joined ... 76
for foreign tribunals, obtaining of order ... 78
before whom taken ... 79
form of ... 78
forwarding after completion ... 79
order may contain directions ... 79
registrar's certificate, form of ... 79
impounded documents, removal of ... 76
interrogatories, examination by ... 58, 59
judgment on, taken by examiner ... 72
certified copy of ... 85
perpetuating testimony, action for ... 78
production of documents, order for ... 73
renewal of writ of summons, of ... 2
taken in other causes, may be read ... 72
other than at trial, mode of taking ... 76
taken at trial, subsequent use of ... 76
witnesses, examination viva voce unless otherwise agreed ... 72
conduct money, entitled to ... 73

SUPREME COURT RULES—*Continued.*

examination PAGE

defendant of, on application for summary judgment 30
discovery for. (*See* discovery) 56
evidence, for use as. (*See* evidence) 72, 78

exchange of properties
proceedings where ordered 115

execution. (*See* creditors' relief Act) 87, 97
audita querela abolished 91
bank notes, seizure of 93
bills, seizure of 93
change of parties, leave to issue after 90
cheques, seizure of 93
corporation, against 92
costs, for 95
costs, against lands, money made on goods 95
of 95
taxation of 96
crops, growing, seizure of, sale of 94
date of 89
death of judgment debtor, upon 90
difficulty arising about 97, 98
direction to sheriff 90
discovery in aid of 97
costs of 98
duration of 89
effect of, as against goods 92
equitable, originating summons, for. (*See* receiver) 67
equity of redemption in goods, seizure of 93
existing rights to enforce judgment not curtailed 91
expenses of 90
expiry of writ, sale after 95
firm, against 89
form 89
garnishee against 100
goods, effect of, as against 92
equity of redemption in, seizure of 93
husband, liable or entitled on judgment against wife 91
issue by leave in certain cases 90
requirements on 89
judgment or order on condition, condition not complied with 87
delivery of land for 88
mandamus, etc. 86
memorandum to be indorsed 86
recovery of property other than land or money 87, 95
special case, on decision after 68
to do act other than payment of money 87
in a limited time 88
or abstain from act, of 88
judicial district, to any 89
land, for recovery of 88, 95
and costs, separate writs 95
issue of, against 94
proceedings on sale of, under 94
return nulla bona to goods necessary 94
sale, time for 94
advertisement of 94
adjournment of 94
notice of 94
transfer, form in certain cases 94
money made on goods, no costs allowed against lands 95
return in such case 94
leasehold interests, seizure of 93
leave to issue in certain cases 90
upon change of parties 90
death of judgment debtor 90
third party, against 18
levy, what to be included in 95

SUPREME COURT RULES—*Continued.*

execution—*Continued.* PAGE

money, for payment of ... 87
seizure of ... 93
mortgages, seizure of ... 93
notice to mortgagor ... 93
nulla bona, return of ... 94, 95
order, of, like judgment ... 91
to do act at expense of party refusing ... 92
partners against ... 88, 89
payment of money, for ... 87
by sheriff, of money realised ... 93
person not a party, by or against ... 91
perishable articles, sale of, under ... 92
poundage, etc., levied upon ... 90, 95
praecipe for ... 89
promissory notes, seizure of ... 93
renewal of ... 89, 90
return of ... 94, 95, 118
enforcing ... 118
sale under ... 92
in interpleader proceedings ... 114
sheriff, by ... 92
notice of ... 92
securities, seizure of ... 93
separate, for debt and costs in certain cases ... 95
sheriff to whom may be directed ... 89
seizure and sale by ... 92
payment by, of moneys realised ... 93
fees of to be deducted from levy ... 93, 94
charges of, poundage, amount chargeable ... 95, 96
where money made in another judicial district ... 96
on withdrawal or stay of execution ... 96
taxation of ... 96
revision of ... 97
six years after judgment, leave for ... 90
stay of ... 89, 91
on ground of facts arisen too late to be pleaded ... 91
on judgment against third party ... 18
taxation of costs of sheriff on ... 96
time for issue of ... 87, 91
within six years ... 90
writ of, date of ... 89
directed to sheriff ... 89
duration of ... 89, 90
expiry, proceedings after ... 95
form of ... 89
indorsements on ... 90
issue of, time for ... 90
leave for ... 90, 91
to any sheriff ... 89
against lands ... 94
praecipe for ... 89
priority of ... 89, 90
renewal of ... 89, 90
return of ... 94, 95, 118
separate, for money and costs ... 95
what to include ... 88

executors

actions by or against on behalf of estate ... 10
administration at suit of ... 15
originating summons for ... 124
attendance of on claim against estate in administration ... 17
costs and compensation of ... 140
opinion, advice or direction of judge, application for ... 127
originating summons, by ... 124

exhibits. (*See* affidavits) ... 33

SUPREME COURT RULES—*Continued.*

PAGE

experts
judge may obtain assistance of ... 127

express trusts
determination of questions regarding ... 124

fees. (*See* costs) ... 140-150

firm. (*See* partnership) ... 12
defendant carrying on business as, service on ... 13

foreclosure
action for, default of appearance ... 28
originating summons for ... 116

foreign judgment
action on, service out of jurisdiction ... 7

forms
adaptation of in use in England ... 152
admission of facts pursuant to notice ... 198
affidavit of documents ... 195
affidavit entry of appearance as guardian ... 192
verifying receiver's accounts ... 229
amendment of writ, order for ... 236
appearance, general ... 193
limiting defence ... 194
notice of entry of ... 193
bond receivers ... 223
replevin ... 230
to retain possession of property ... 231
certificate of local registrar ... 200
confession of defence ... 194
counterclaim, notice of ... 194
defence, confession of ... 194
documents, notice to admit ... 197
produce ... 196
general ... 199
inspect ... 196
order for affidavit of ... 238
to produce for inspection ... 239
entry of special case ... 202
exhibits at trial, marking of ... 202
facts, admission of pursuant to notice ... 198
notice to admit ... 198
foreign tribunals evidence Act, order under ... 206
certificate of registrar under ... 207
garnishee summons ... 223
injunction order ... 223
judgment ...
after assessment of damages ... 209
after motion on leave reserved ... 216
after trial by court without jury ... 213
after trial of question of account by local registrar ... 212
after trial with jury ... 209, 210
at trial by judge ... 209
consent for judgment, order for ... 216
default, ejectment ... 208
recovery of land ... 208
when liquidated ... 207
when unliquidated ... 207
for costs after acceptance of money paid into court ... 215
for defendant's costs of discontinuance ... 214
plaintiff's costs after confession of offence ... 214
interlocutory in default where unliquidated ... 195
in court for amount to be ascertained ... 211
of dismissal on nonappearance of plaintiff ... 213
on an award after trial ... 210
order of reference by consent at chambers ... 211
on motion after trial of issue ... 215
pursuance of order ... 214
upon motion for judgment ... 212
where no judgment entered at trial by jury ... 215

SUPREME COURT RULES—*Continued.*

forms—*Continued*

notice PAGE

admit documents ... 197
facts ... 198
application to hear originating summons ... 234
claim to goods taken in execution ... 232
counterclaim ... 194
entry of appearance ... 193
inspect documents ... 196
limiting defence ... 194
plaintiff's admission or dispute of claim of claimant's title ... 232
produce (general form) ... 199
produce documents ... 196
third party ... 192
trial ... 195

order

affidavit as to documents ... 238
amending ... 236
commission long and short ... 202
deliver bill of costs ... 244
discharge or vary application of third party ... 238
dismissing for want of prosecution ... 238
motion generally ... 251
examination in aid of execution ... 246
examination of witness before trial ... 242
and production documents ... 241
touching means ... 246
foreclosure nisi ... 255
foreign tribunals evidence Act, under ... 206
for time ... 234
garnishee ... 243
general form ... 234
injunction, interim ... 253
issue between judgment creditor and garnishee ... 243
issue of notice claiming contribution ... 240
interpleader ... 247-250
judgment under rule 135 (summary judgment) ... 235
jury to try action ... 254
on client's application to tax solicitor's bill ... 244
solicitor's application to tax bill of costs ... 245
particulars, counterclaim ... 237
general ... 237
in accident case ... 237
partnership ... 236
pay money into court under rule 137 ... 235
138 ... 235
to plaintiff's solicitor, rule 139 ... 236
produce documents for inspection ... 239
receiver ... 252
reference ... 240
to local master ... 242
remove judgment from district court ... 242
renewal of writ ... 240
sale ... 254
security for costs ... 254
service substituted ... 239
out of jurisdiction ... 239
to try action in district court ... 246
tax after action brought ... 246
witness in criminal custody to be brought up ... 251

ordering accounts and inquiries ... 199
originating summons ... 233
notice of application to hear ... 234
particulars order for ... 237-236
praecipe for direction to bank ... 194
subpoena ... 205
writ of attachment ... 217
certiorari ... 218

SUPREME COURT RULES—*Continued.*

forms—*Continued.*

praecipe for direction to bank, *Continued*—

writ, etc., *Continued*— PAGE

delivery ... 217

fi. fa. ... 216

possession ... 217

and fi. fa. continued ... 217

receiver account ... 226

affidavit verifying ... 229

bond ... 223

order ... 252

reference order for ... 240

replevin bond ... 230

retain possession of property bond for ... 231

renewal of writ, order for ... 240

service substituted, order for ... 239

out of jurisdiction, order for ... 239

special case, entry of ... 202

subpoena ad test ... 205

duces tecum ... 206

habeas corpus ad test ... 205

third party notice ... 192

writ attachment of goods ... 230

money. (*See* garnishee)

person ... 221

delivery ... 220

distringas against ex-sheriff ... 222

execution ... 218

possession ... 219

and fi. fa ... 218

replevin ... 230

sequestration ... 221

summons ... 191

funds in court. (*See* payment into court) ... 39-44

banking ... 43

cheques to be countersigned by judge ... 43

deposit at interest ... 42

special account to be kept ... 43

conversion of securities, application for ... 44

infant or person of unsound mind, recovered by ... 42

investment of ... 42

garnishee. (*See* attachment of debts) ... 98

general rules

practice and procedure to remain in force if no alteration ... 162

repealed orders not revived ... 162

guarantee company, meaning of ... 162

guardian, official ... 161

guardian

accounts of, passing ... 106

ad litem ... 128

infants, of ... 155-161

lunatics, of ... 153-155

security by ... 156

heir at law

administration judgment obtainable by ... 124

advertisement for claims by ... 127

not necessary party to action to execute trusts of will ... 14

originating summons by ... 124

representation of unascertained ... 14

husband and wife

service on when both defendants ... 5

indemnity or contribution

defendant claiming against third party ... 17

defendant ... 19

indorsement of addresses, etc., on writ of summons ... 3

of date of service of writ unnecessary ... 6

SUPREME COURT RULES—*Continued.* PAGE

infants, actions in which interested, service on official guardian..... 161
administration ad litem..... 160
access to by mother may be ordered..... 158
appearance by 12
appearance in certain cases..... 160
authority to enter written..... 12
appointment of guardian on notice to mother..... 156
apprenticing of 157
court may discharge for cause..... 157
custody of 155-159
consent by, as to procedure..... 12
court has power to deal with estate..... 160
custody of in father generally..... 158
evidence as to who entitled..... 158
defend by guardian..... 11
delivery to mother in some cases..... 158
estate and property of.....159-161
disposition of 159
application by whom..... 159
consent of infant to..... 159
enforcement of orders by attachment, etc..... 158
execution of conveyance, who to make..... 159
general power of court or judge..... 156
guardian may be removed..... 157
guardian ad litem..... 161
costs of 161
guardianship of 155-159
maintenance of 156-158
money raised, disposition of..... 159
from land how devolves..... 160
mother may be appointed guardian..... 156
may be preferred to father..... 156
mother unsuitable for care of..... 159
official guardian to be served..... 161
duties of 161
payment into court and investment of moneys recovered by..... 42
persons and estates of.....155-161
interested coming into existence after action..... 20
pleading by, omission of denial in, no admission..... 33
proceedings by public administration..... 161
practice and procedure as in England with variations..... 157
public administrator may be guardian..... 161
renewal of testamentary guardian..... 156
security by guardian..... 156
may be dispensed with..... 157
service of writ of summons on.....5, 26
notice of judgment on..... 16
sue by next friend, etc..... 71

injunction
application for, how made..... 102
form and effect..... 104
interlocutory, order for..... 102
service out of jurisdiction in actions for..... 7
wrongful act, against continuance of..... 104

insolvency of parties
action not to abate on..... 20

inspection of documents. (*See* documents)..... 54

inspection of property by judge or jury..... 103

inquiries
accounts, and 64
conveyance, fraudulent, into..... 67
damages, as to..... 67
cause of action continuing, where..... 67
damages, as to on interlocutory judgment in default of appearance 27

SUPREME COURT RULES—*Continued.*

inquiries—*Continued.* PAGE
fraudulent transfers, into....67, 68
originating summons for.... 67
order for sale after.... 68
interim injunction or receiver.... 68
interim preservation of property.... 103
interlocutory orders.... 102
allowance out of estate, pendente lite.... 104
applications for.... 102
detention of property for.... 103
who may apply.... 103
experiments for.... 103
generally....102-105
injunction, form and effect.... 104
against continuance of wrongful act.... 104
inspection, etc., of property.... 103
by jury.... 103
who may apply for.... 103
interim preservation of property.... 102
order for early trial to avoid going into merits.... 102
preservation of property.... 102
sale of perishable goods, for....102-103
who may apply.... 103
samples, authorising taking of.... 103
interpleader.... 111
adverse titles of claimants in.... 113
affidavit for.... 112
appeal in.... 114
cases in which granted.... 111
claim, sheriff to give notice of.... 112
where execution creditor admits.... 112
claimants not appearing or being in default.... 114
costs.... 115
defendant, application by, time for.... 113
stay of action.... 113
discovery and inspection.... 114
judgment upon.... 120
special directions regarding.... 120
landlord, proceedings by.... 120
issue may be ordered.... 113
notice of motion....112, 113
order on.... 113
summary disposal of.... 113
powers of judge generally.... 114
sheriff's interpleader.... 111
claims in respect of which application may be made.... 111
to be in writing.... 112
notice of, to execution creditor.... 112
not admitted, procedure.... 112
admitted procedure.... 112
costs in case of withdrawal.... 112
execution creditor, notice to.... 112
by.... 112
sale of goods seized....114, 115
several writs against same property.... 114
security by claimant, redelivery.... 114
special case, where question one of law.... 113
stay of action where defendant interpleads.... 113
interpretation of terms and short titles....161, 162
application to set aside proceedings for.... 152
costs of.... 152
time for.... 152
fresh step after, effect of taking.... 152
jurat of affidavit, in.... 82
noncompliance with rules, by.... 152
service, setting aside for.... 26
waiver of.... 152
writ, setting aside for.... 26

SUPREME COURT RULES—*Continued.*

issue of process PAGE
issues. (*See* inquiries, accounts) 64
costs of to follow the event 140
directed before granting discovery 56
issuing execution 91
garnishee, to determine liability of 100
motion for judgment, on 84, 85
partner, to determine liability of alleged 89
fact, when directed 64
fraudulent transfers, concerning 68
interpleader. (*See* interpleader) 113
joinder of 39
judge may direct 64
preparation of may be ordered 64
settling 64
trial of 64
joinder of causes of action
assignee of insolvent 22
exclusion, order for 22
execution or administration 23
generally 22
inconvenient for trial together 22
husband and wife 23
issue
close of pleadings 39
default of pleading, by 39
reply, by 39
joint and separate claims 23
order to exclude causes of action improperly joined 23
parties of. (*See* parties) 9
where cause of action improperly joined 23
with one for recovery of land 22
joinder of issue 32, 33
judgment
amendment of clerical errors in 53
antedating of 56
application for summary 29
certificate to be filed when entered 86
clerical mistakes in 53
clerk to enter and record 85
conditional execution of 87
waiver of 87
confession of defence, for costs on 45
consent by defendant to be represented 87
proof of consent 87
copies, certified, effect 85
costs for, where money paid into court in satisfaction of claim 41
counterclaim on 32
date of 86
death of parties after 90
declaratory, may be asked for 46
default, by, against infant or lunatic 26
of appearance. (*See* default of appearance) 26-29
of pleading. (*See* default of pleading) 46-48
setting aside or varying 28
substitutional service, where 8
delivery of land, for enforcing 88
demand, when not required after 87
directions in for accounts, etc. 64
discontinuance, on 51
dismissal of, on plaintiff not appearing 70
enforcing, against corporations 92
difficulty in 97, 98
for payment of money. (*See* execution) 87
for recovery of land 88
property 88
ordering doing or abstaining from some act 88

SUPREME COURT RULES—*Continued.*

judgment—*Continued.* PAGE

entry of, affidavit, on production of ... 86
certificate, on production of ... 86
date of ... 86
document, on production of ... 86
order, on production of ... 86
production of documents on ... 86
recording at length ... 85
error in ... 53
execution of. (*See* execution) ... 87
existing rights to enforce not curtailed ... 91
firm, against enforcement ... 88, 89
garnishee against ... 100
mandatory, carried out at expense of disobedient party ... 92
mistakes in ... 53
motion for ... 83-85
application may be turned into ... 85
appearance, notice of before ... 85
admissions, on ... 63
finding of jury, setting aside ... 83-84
inferences of fact, court may draw on ... 84-85
judgment of court to be obtained by ... 83
wrong, where ... 83, 84
notice of motion for, before appearance ... 85
setting down action on ... 84
motion for setting down action on, time for ... 84
trial of issues, after ... 84
trial, after ... 84
standing over ... 84-85
turning application into ... 85
notice of ... 16
advertisement, by ... 127
appearance by person served with ... 16
application by party served to discharge, vary or add to ... 16
time for ... 16
attendance of proceedings by persons served with ... 16
service of, effect of ... 16
memorandum of ... 16
on persons interested in estate under disability ... 16
obedience to without demand ... 87
omission in, correcting ... 53
orders enforceable as ... 91
originating summons, on ... 120
partners against ... 88, 89
personal estate, for account of ... 65
postdating ... 86
recording at length ... 85
recovery of land, for ... 88
satisfaction of ... 87
setting aside, default on ... 28
of appearance ... 28
third party, by ... 18
trial at ... 70
where wrong, on finding of jury ... 83-84
setting aside or varying ... 29
slip in, correcting ... 53
special case on ... 69
special directions as to by judge ... 120, 125
stay of proceedings under, in case of appeal ... 132
summary. (*See* summary judgment) ... 29
third party, against ... 18, 19
time for doing any act, must be stated in ... 86
when point raised, disposes of action, etc ... 45

jury, payment into court not to be communicated to ... 42
trial by, in civil cases ... 49
(*See* trial)
(*See* Statute respecting Juries)

SUPREME COURT RULES—*Continued.*

land PAGE

action for recovery of, against overholding tenant ... 119
appearance in, of person not named as defendant ... 25
limitation of defence to be stated ... 25
default of appearance in, judgment upon ... 28
pleading in, judgment on ... 47
appearance by landlord ... 25
person in possession not defendant, appearing in ... 25
service of writ where possession vacant ... 5
out of jurisdiction ... 6
judgment for recovery of, enforcing ... 87
separate execution for costs ... 95
originating summons against overholding tenants ... 119
suits for possession, by mortgagors ... 116

landlord and tenant. (*See* land)

legatee

administration at suit of any residuary legatee of legacy charged on land ... 15

lien

actions for sale or redemption, default of appearance in ... 28

liquidators

accounts of, passing ... 106

local masters

appeal from decision of ... 124
appeal not a stay unless ordered ... 124
jurisdiction of ... 123
powers of ... 123
reference to judge by ... 123, 124

loss of negotiable intrument

defence excluded when indemnity offered ... 35

lost writ

copy may be sealed in lieu of ... 3

lunatics

admissions in pleadings, none by want of denial ... 33
application by petition and verified ... 153
consent by as to procedure ... 12
costs ... 153
evidence by commission, on ... 153
examination of ... 153
guardian, appointment of ... 153
hearing of ... 153
service on ... 153
guardianship and disposition of estates of ... 153-155
guardian's remuneration ... 155
instituting proceedings ... 155
local registrar's fees ... 155
personal estate not sufficient for maintenance, real estate may be dealt with ... 155
personal estate not sufficient to pay debts, application to sell or mortgage real estate ... 154
bond to be given ... 154
inquiry by judge on ... 154
order to be made ... 154
what to be shown on ... 154
provisions to be complied with by guardian ... 153, 154
inventory ... 154
security ... 154
supplementary inventory ... 154
verification of inventory ... 154
public administrator may be guardian ... 161
removal of guardian ... 155
service of writ of summons on ... 5, 26

mandamus

claim for ... 102
interlocutory application for ... 102

SUPREME COURT RULES—*Continued.*

mandamus—*Continued.* PAGE
judgment for 104, 105
enforcement of 105
protection of person acting under 105
time for performance of duty commanded 105
extension of time 104
writ not to be issued 105

marriages
action not to abate on 20

master. (*See* local master) meaning of 162

matters arising pending the action 44

merchants, judge may obtain assistance of 127

money in court. (*See* funds in court)
banks to be paid into 43
bank to give receipt in duplicate 44
direction to pay into bank 44
payment out in small intestate estates 44

mortgage
action on, claiming foreclosure, sale or redemption, default of appearance 28
originating summons for sale, foreclosure, redemption or possession 119

motion, notice of 122
form of 122
time for return, 10.30 a.m. 122
list of 122
how called 122

motions and applications
adjournment of hearing 118
where persons not served 118
affidavits, to be served when 117
before appearance 118
chamber motions to be by notice of motion 117
court motions, etc., to be by motion 117
dismissal where parties not served 118
ex parte, when authorised 117
orders may be made to avoid irreparable mischief 117
setting aside or varying 117
grounds to be stated in certain cases 117
judgment for. (*See* judgment) 117
notice of 117, 118
length of 118
service before appearance 118
on nonappearing defendant 118
orders
cases in which need not be drawn up 119
notice of in such cases 119
date of 119
preliminary questions may be decided 118
sheriff, notice to return writ, etc 118, 119
effect of 118, 119

negotiable instruments, loss of, defence excluded when indemnity given 35

next of kin
administration action by 14, 122
advertisement for claims by 127
originating summons by 122
representation of unascertained 14

noncompliance, effect of. (*See* irregularity) 152

not guilty by statute, defence of 32
other defences excluded unless leave granted 32, 33

notice of action against public officers 152
judgment of, to be given, when 16
pleaded, how to be 34
trial of, by plaintiff 48
by defendant 48

number, singular includes plural and vice versa 162

SUPREME COURT RULES—*Continued.* PAGE

offices, when to be open 138

orders
amendment of errors in 53
clerk to enter and record 85
consent, appeal from 128
date of 119
drawing up, not required, when 119
notice of 119
enforceable like judgments 91
entry of 85
errors in 53
form of 122
indorsement, copy of, for service 86
mandatory, carried out at expense of disobedient party 92
notice of, where not drawn up 119
service of 8
substitutional 8
setting aside or varying 128

ordinances
validity questions in action, notice to be given attorney general 17

originating summons
administration of estate of deceased and of trust, for 124
accounts concerning 126
appearance to 120
notice of to be given 120
judgment upon 120
attendance under 120
appointment for, form of 120
delivery of possession for 116
determination of matters relating to express trusts and administration 124
evidence on 125
evidence on application 117
executors, applications by 124
foreclosure for 116
persons to be served 116
form 120
hearing of may be advertised 125
issue of 120
judgment upon 120, 125
special directions regarding 120, 125
landlord, proceedings by 119
mortgagee may be required to produce books 117
mortgages, respecting 116
possession, recovery of, by landlord for 119
mortgagor or mortgagee for 116
proceedings which may be commenced by 119
reconeyance, for 116
redemption for 116
return of, time for 120
sale under mortgage, for 124, 125
signed and sealed to be 120
form of 120
service of, manner 120
special directions 117
stay of proceedings, for 124, 125
time for return of 120
trial of questions in 117
trusts, in matters, affecting 124, 125

particulars
no stay of proceedings 32
ordering 32
order not to operate as stay or extend time 32
time for pleading after 32

parties
absent, representation of 14
action not defeated for want of 11

SUPREME COURT RULES—*Continued.*

parties—*Continued.* PAGE
adding 11
application for 11
by judge at any time 11
change of interest, on 20
defendant 11
served how 11
plaintiff 10
service on 11
administration, actions to 14
to, to be served with notice of judgment 15, 16
administrators may represent estate or beneficiaries 10
amendment as to 10
appearance by persons not 25
bill of exchange, to actions on 10
cestuis que trust, one of, may have decree for execution of trusts 15
represented by trustees 10
capacity of, change of 20
change of. (*See* change of parties) 20
class represented by some members 10
trustees 10
costs, by reason of misjoinder of plaintiff 9
counterclaim not affected by misjoinder of plaintiff 9
death of 20
deceased, representation of 16, 17
defendant
adding 11
alternative claims against 9
claiming contribution against third party 17
jointly and severally liable 9
need not be interested in all relief claimed 9, 10
representative capacity of, statement of claims to show 10
who may be joined as 9, 10
doubt as to 10
executors and administrators representing estate or beneficiaries .. 10
heir at law not necessary party to action to execute trusts of will .. 14
infants. (*See* infants)
joinder of, as plaintiffs 9
severally or jointly and severally liable on same contract 9
two or more defendants when plaintiff in doubt 10
joint claims by 22
legal personal representative, where no 16, 17
legatees, to administer actions by 15
lunatics, as. (*See* lunatics)
marriage of 20
misjoinder 9, 11
effect of, on counterclaim 9
motion to add, strike out or substitute 11
next of kin as, may have judgment for administration 15
nonjoinder, effect of 11
numerous, having same interest 10
partners. (*See* partners) 12, 14
persons liable on the same contract 9
not parties, how far bound 15, 16
served with notice of judgment, to be 15, 16
plaintiff, adding and substituting 11
death, marriage and insolvency of 20
doubt of, as to parties 10
joint claims by several 9
mistake as to 9
who may be joined as 9
power to approve compromise in absence of parties 10
protection of property, actions for 15
representation, numerous parties, in case of 10
representative, legal, where no 16, 17
of heir, next of kin or class 14, 16, 17
plaintiff in actions to prevent waste, etc 15
residuary legatee may have judgment for administration 15

SUPREME COURT RULES—*Continued.*

parties—*Continued.* PAGE
service on added ... 11
striking out and adding ... 9, 11
application for ... 9, 11
by court or judge ... 9, 11
substitute of ... 11
suits by some on behalf of others ... 10
to prevent waste ... 15
third, rules as to. (*See* third party) ... 17
trustees as ... 10
trusts, to actions for execution of ... 15
unascertained, representation of ... 14
want of, cause not defeated for ... 11
waste, in action for ... 15
wrong plaintiff ... 9

partition
action for, default of appearance ... 28
proceedings where ordered ... 115

partners ... 12-14
appearance by individually where sued as firm ... 13, 14
person having control of business but not a ... 13
disclosure of names of ... 12, 13
application for ... 12
demand for ... 12
stay in default of ... 13
execution against ... 89
leave for when required ... 89
firm, person trading as ... 5, 13, 14
firm, execution on leave ... 57
judgment against firm, effect of ... 89
as against partner out of jurisdiction ... 89
firm name, may sue or be sued in ... 11
names of, to be given, when ... 12
service of writ on ... 13
mode of ... 5
notice of, in what capacity ... 13
where partnership dissolved ... 13

payment into court
acceptance of sums paid in before defence ... 40
admission by ... 39
amount in dispute, of ... 39
appropriation, on ... 39, 40, 41
consolidated actions, in ... 41
conversion of securities, notice of application for ... 44
costs after ... 41
counterclaim, in answer to ... 42
debt or damage, in actions for ... 39
defence, to be signified in ... 40
defendant may make, before defence ... 40
notice of ... 40
after defence ... 39
with defence ... 39
denial of liability with ... 40
deposit in bank ... 43
dispute, of amount in ... 39
infant, money awarded to ... 42
investment on ... 42
jury not to be informed of ... 42
libel action, none if liability denied ... 39
notice of ... 40
originating summons for ... 124
persons under disability, moneys recovered by ... 42
plaintiff may make, as answer to counterclaim ... 42
not accepting ... 41
pleading ... 40
refusal of amount paid in ... 41

SUPREME COURT RULES—*Continued.*

	PAGE
payment into court—*Continued.*	
satisfaction of claim, in	39
counterclaim	42
acceptance of, in action	40
form of	40
slander, in actions for	39
tender with defence of	40
time for	39
payment out of court	
acceptance by plaintiff of sum paid in, on	40
cheques to be countersigned by judge	43
defendant's liability not denied, where	40
denial of liability, where	40
money recovered by infant	42
order for when required	42
payment into court before defence, of	40
plaintiff's request in certain cases, on	40
small intestate estates, in	44
tender set up, where	40
perpetuating testimony	78
person	
meaning of	161
of unsound mind. (*See* lunatics)	
plaintiff. (*See* parties)	
adding	10
address to be given on writ	3
death, marriage or insolvency	20
may not serve writ	4
not to be delayed by questions between defendants	19
representative capacity of, statement of claim to show	10
striking out or substituting	11
who may be joined as	9
pleading	31
actions for debt or liquidated demand on contract	36
actions on bills, notes, etc., defence must deny a fact	36
admission in. (*See* admissions)	62
allegations of fact in, each party to deal specifically with	34
alternative contracts	34, 35
amend, applications for leave to	52
amended, delivery of	53
amendment of. (*See* amendment)	51
manner of	52
close of	39
condition precedent, performance of	33
constitutional questions, raising	17
contents of	31-35
contract, alternative	34-35
implied from letters	34-35
bare denial of, how construed	34
conversations	34
costs of unnecessary prolixity in	31
counterclaim. (*See* counterclaim)	32
damages, allegation affecting	33
dates, etc., in	31
default of. (*See* default of pleading)	46
delaying matter in	35
delivery of	31
delivery of, amended	53
at address for service	3, 24
enlargement of time for	139
vacation in	137
where no address for service	3, 24
denial of allegations of fact to be specific	33
contract, of	34
evasive, must not be	34
general, not sufficient	33
point of substance	34

SUPREME COURT RULES—*Continued.*

pleading—*Continued.* PAGE

departure 33
documents, effect only of, to be stated in 34
embarrassing matter in. (*See* striking out) 35
enlargement of time for 139
evidence, not to be stated 31
facts relied on must be set out in 31
false, frivolous pleadings set aside 46
figures to be used in 31
filing, vacation excluded from time for 137
form, no technical objection for want of 35
fraudulent intention 34
grounds of defence or reply to be in 33
implied contract or relation 34
improper, costs of may be disallowed 35
inconsistent, not to be 33
knowledge 34
law, presumption of 35
raising points of 45
letters, contract or relation implied from 34
malice, fraud, knowledge, etc. 34
material facts, to state 31
matters arising pending the action 44
mind, condition of 34
mode of delivery of 32
negative pregnant 34
new ground of claim 33
matters arising after action brought 44
no denials necessary as to damages 36
no plea in abatement 38
not guilty by statute 38
notice as a fact 34
numbers in 31
paragraphs to be divided into 31
particulars may be ordered 32
payment into court with defence 39
point of law, raising 45
substance in 34
posting when no address for service 3, 25
prejudice, matters of, in 35
presumptions of law 35
printed or written, may be 35
raising points of law 45
relation, implied 34
relief claimed to be stated specifically 35
reply. (*See* reply) 39
by leave, subsequent to 39
to counterclaim, in 33
scandal in. (*See* striking out) 35
several distinct claims 36
specific denial in, when required 33
stated or settled account 36
striking out. (*See* striking out) 35
when no ground of action 45
subsequent to reply 39
technical objection to 35
tender 40
time for, application for 139
computation of 138, 140
in vacation 108
subsequent to reply 39
unnecessary matter in 35
costs of 35
vacation, not necessary in 137-138
written or printed, may be 35

possession
originating summons for, under mortgage 116

powers of local masters at chambers 123

SUPREME COURT RULES—*Continued.* PAGE

preservation of property, interim 102

probate actions, meaning of 161

production of documents. (*See* documents, production of)
production of documents by registrar of land titles 73

promissory note
joinder of parties to, as defendants 10
loss of, no defence where indemnity offered 35

proper officer, meaning of 161
how ascertained 161, 162

property, preservation, interim 102
protection of, representative action for 15

public officers
actions against, limitation 152
notice of 152

receiver
accounts of, book to be deposited 106
form of 106
passing 106
allowance to 105-106
balances, payment of 105-106
neglect of 106
default by, in accounting, etc. 106
filing and passing accounts 105-106
meaning of 162
salary of 105-106
security by 105
adjournment to chambers to complete 105

recovery of land. (*See* land)

redemption
action for, default of appearance in 28
originating summons for 116

registrar of land titles not compelled to produce documents except on leave of attorney general 73

reference. (*See* inquiries, accounts)
as to damages 67

renewal
writ of execution, of 89-90
summons of 2-3

rent. (*See* land)

replevin
affidavit for 109
bond to be taken 110
assignment of 110
form of 110
defendant's rights, on 110
concealment of property 110
issue of writ, when authorised 109
retention of property, on security being furnished 110, 111
assignment of security in such case 110
return by sheriff, to writ 111
service of writ 110

reply. (*See* pleadings)
close of pleadings, on default in delivery of 39
counterclaim, to 37
default of reply, effect 39
denials in, must be specific 33
further, of matter arising pending action 45
joinder of issue, by 39
matter arising pending action, of 45
omission of, effect 39
pleading, rules of 31-35
subsequently to, not without leave 39
time for 39
enlargement of 39, 139

SUPREME COURT RULES—*Continued.*

representative PAGE
capacity of plaintiff or defendant, statement of show ... 10
heir at law of ... 14
next of kin of ... 14
numerous persons or class of ... 10
unascertained class, of ... 14

residuary devisee or heir, administration at suit of ... 15
originating summons by ... 124
legatee or next of kin, administration at suit of ... 15
originating summons by ... 12

sale
action for default of appearance ... 28
conduct of sale of trust property ... 126
judgment for, notice to persons interested but not parties ... 15-16
originating summons for, under mortgage ... 116
procedure where ordered by court ... 115

sales of land by order of court ...
approval of judge to be had ... 115-116
conveyance, parties to ... 116
debenture holders' actions, etc. ... 116
mortgage, proceedings for sale under ... 115-116
order for ... 115
parties bound by ... 115
modes of carrying out when ordered by court ... 115

scientific persons
judge may obtain assistance of ... 127

service
admission and acceptance by solicitors ... 8
address for, plaintiff to give ... 3
service if omitted ... 3
defendant to give ... 24
if omitted not to receive approval ... 24
affidavits of, form ... 151
defendant not appeared, on ... 25
filing in registrar's office, by ... 3
mode and time of service where not personal ... 150
notice from supreme court ... 150
on persons not parties ... 37
order, where necessary to show original ... 150
personal service similar to writ of summons ... 151
pleadings, proceedings, etc. ... 8
substitutionally ... 8
solicitor of party formerly appearing in person to be served ... 151
solicitor of person not a party ... 151
substituted service ... 151
where no appearance or no address given ... 151

service of writ of summons ... 5
affidavit of, writ and claim to be marked as exhibits to ... 6
agent, on, of defendant out of territories ... 5
corporations, on ... 5
defendant's whereabouts unknown ... 8
added on ... 11
fees for, to whom allowed ... 4
firm, defendant carrying on business as ... 5
indorsement of service unnecessary ... 6
infant defendant ... 5
husband and wife defendants ... 5
land, in action to recover, where vacant possession ... 5
lunatic or person of unsound mind ... 5
original served in mistake ... 6
partners, on ... 5, 13
notice of capacity in which served ... 13
dissolution, after ... 13
personal ... 5
plaintiff may not effect ... 4
several defendants, some not served, procedure ... 27
who may effect ... 4

SUPREME COURT RULES—*Continued.* PAGE

service out of jurisdiction 6
application for leave for 7
cases in which allowed 6-7
concurrent writ for 2
defendant's whereabouts unknown, order for, may be dispensed with 8
order for, to limit time for appearance 8
partner not necessary on, where firm served within jurisdiction 13
substitutional service may be allowed 8
set off, writ not to be issued without leave. (*See* counterclaim) 1
setting aside
judgment by default 28, 70
service of writ 26
order for 26
writ of summons for irregularity 26
setting down for trial. (*See* trial) 48
sheriff's fees—tariff
sheriff, enforcing return by 118-119
sittings of court 137
dates for ordinary trials 137
court en banc 137
court en banc, of 137
solicitor. (*See* advocate) 137
special case
agreement to pay money according to judgment on 69
cause or matter, in any 68
consent by 68
contents of 68-69
costs of 69
court may draw inferences on 69
documents referred to in 69
entry of judgment on, for agreed sum 69
evidence on, where parties under disability 69
form of entry 69
inferences of fact or law may be drawn on 69
in interpleader 113
judgment on, agreement for 69
execution on 69
order of court by 69
paragraphs, division into 68
parties to 68
setting down of, where parties under disability 69
signing and filing 69
trial of preliminary question of law by 69
statement of claim. (*See* pleading) 35
amendment of 51-53
causes of action, joinder 22
copy to be attached to writ 1
filing on issue of writ 1
further and better 32
pleading, rules of 31-35
relief claimed to be stated specifically 35
representative capacity of parties to be shown 10
several distinct claims 36
stated or settled accounts 36
striking out 35, 45
stay of action or proceedings
appeal pending 132
partners, nondisclosure of names, on 13
solicitor repudiating issue of writ 4
trustees, executors, etc., applications by 124
striking off roll
motion for, requirements 117

SUPREME COURT RULES—*Continued.*

striking out PAGE
appearance. (*See* summary judgment) 29
pleading, disclosing no cause of action or answer 45
embarrassing, prejudicing, scandalous or unnecessary 35

subpoena
correction of errors in names 77
for examination in cause 75-76
for cross examination on affidavit 75, 76, 77
for proceedings in chambers 77
form of 77
how long to remain in force 77
mode of obtaining 77
number of names in 77
not more than three in a duces tecum 77
service of 77
service, proving 77
time for 77
witness disobeying may be arrested 74-75
costs against 75

substitutional service
affidavit on 6
pleadings and suit proceedings, of 8
writ of summons 8
defendant's whereabouts unknown 8
entry of judgment, where served substitutionally proof of claim 8
jurisdiction, out of 8
land, action for recovery, vacant possession 5
personal service impossible 6

summary inquiries into fraudulent transfers. (*See* inquiries) 67-68

summary judgment
application for, where liquidated demand 29
affidavit in support of 29
to be served 29-30
cause, showing, by affidavit 30
bringing in amount claimed 30
cross examination on affidavit 30
subpœna for 75
documents, production on 30
notice of motion, by 29-30
service of 29-30
unliquidated demand, included 29
costs 31
leave to defend 30
conditional 30
order for, where no cause shown 29
part of claim, for 30
reference to local master 30
tenant's rights 31

tariff of fees—Criminal Code, section 761 319
court en banc, registrar's fees 313
court reporters 318
interpreters 318
jurors 318
justices 319
recognisance 319
registrars 313
sheriffs 315
solicitors 305
witnesses 318

taxation of costs. (*See* costs) 142

taxing officer, meaning of 162

third party
adding 17
admission by nonappearance 18

SUPREME COURT RULES—*Continued.*

third party—*Continued.* PAGE

appearance by 18
time for 18
default of 18
leave for, after default 18
costs, generally 19
defendant, claiming against codefendants may adopt procedure 19
directions as to trial 19
application for 19
general may be given 19
prevention of delay to plaintiff 19-20
execution against, where judgment by default of appearance 18-19
judgment against 18-19
judgment, default of appearance, on 18
setting aside 18
between defendant and 18-19
liberty to, to defend action or appear at trial 19
notice to, application for 17-18
time for 18
filing of 18
service of 18
time for 18
contents of 18
statement of claim to be served with 18
plaintiff not to be prejudiced or delayed by 19
trial of liability, directions as to 19

time

abridgment of 139
appearance to writ of summons, for 2
may be shortened 2
for service ex juris 7, 8
clear days, how reckoned 140
enlargement by consent 139
exclusion of Sundays 139
expiring on Sunday or close day 139
expiring on holiday 139
for giving security for costs, when not to be reckoned 139
month means calendar month 138
motions, length of notice 118
notice after year's delay 140
number of days, how computed 140
service of papers, for 139
six days, where less than 139

trial. (*See* evidence)

adjournment of, terms 70
avoidance of 49
countermanding notice 49
cross examination, disallowing questions in 71
defendant appearing, plaintiff not 70
default, judgment by, setting aside 70
delivery of, at or after trial 71
motion for, not necessary 71
early trial in certain cases 102
entered by both parties for 50
entry of 49
entry for trial by party served with notice 50
exclusion of witnesses 70
exhibits, how to be marked 71
jury in certain cases 49
costs of 49
demand for 49
libel or slander actions, must assert truth to be allowed to give evidence in chief in mitigation of damages 71
lists of trials 50
notice of 48-50
form of 49
notice in jury cases 49
notice, length of 49

SUPREME COURT RULES—*Continued.*

trial—*Continued.* PAGE

notice of postponement, withdrawal or settlement ... 50
omission to prove material fact at ... 70-71
plaintiff appearing, defendant not ... 70
pleadings to be filed when entry made ... 50
by whom ... 50
postponement of trial, terms ... 70
separate, of different causes of action ... 22
setting cause down for ... 48
speeches to jury, regulated ... 71
third party, liability of ... 18-19
withdrawal of cause ... 50

trustees. (*See* parties)
actions by or against as representing estate, etc ... 10
application by, for opinion and direction of court ... 127
judgment for execution of trusts at suit of ... 15
originating summons by, for determination of questions ... 124
stay of actions on application of ... 125
substituting a trustee ... 126

trust
heir not necessary party to action for execution of ... 16, 17
judgment for execution of ... 15
originating summons in matters relating to ... 124
representation of parties in actions for execution of ... 16-17

vacant possession, service where, in action to recover land ... 5

vacation
Christmas or short ... 137
not to count ... 138
contested business excluded in ... 137
default judgment ... 138
ex parte proceedings ... 138
long vacation ... 137
time for ... 137
no contested business in ... 137
exceptions ... 137
period of ... 137
pleading in, extension of time ... 137
rules as to ... 137, 138
taxation of costs in ... 138
vacation judge's order not to be reversed ... 138

vesting orders
mortgage proceedings, in ... 116

witness, costs against ... 76
disobedience ... 74
objections ... 74
warrant for arrest ... 75

writs
attachment of goods. (*See* attachment of goods) ... 106
execution. (*See* execution) ... 87
garnishee. (*See* attachment of debts) ... 98
replevin. (*See* replevin) ... 109

writ of summons
action to commence by ... 1
appearance to, time for ... 2
may be shortened ... 2
where service ex juris ... 7, 8
concurrent ...
form and issue ... 2
marked "concurrent" ... 2
renewal of ... 2
service out of jurisdiction, for ... 2
in other judicial district, for ... 2
return of, time for ... 2
may be shortened ... 2
service of original, instead of ... 6
copy for service, claim to be attached to ... 1

SUPREME COURT RULES—*Continued.*

writ of summons—*Continued.* PAGE

date of issue to appear on writ ... 2
duration of ... 2
filing and entering ... 2
filing before judgment by default of appearance ... 26
indorsement ...
address of plaintiff and advocate ... 3
for service of plaintiff ... 3
occupation of plaintiff suing in person ... 3
residence of plaintiff suing in person ... 3
service, date of, unnecessary ... 6
issue of ... 1
praecipe to be filed ... 1
contents of ... 1
statement of claim to be filed on ... 1
lost, where, copy may be sealed in lieu of ... 3
original served in mistake, dispensing with production ... 6
renewal of, application for ... 2
duration and effect of renewed writ ... 3
evidence of ... 3
return of, time for ... 2
may be shortened ... 2
where for service ex juris ... 7, 8
service out of jurisdiction, for ... 6
to be prepared by plaintiff ... 1
undertaking to accept service ... 4

SURROGATE COURT RULES ... 257-268

accounts of executors and administrators to be passed ... 261

affidavits to lead to grant when to be made ... 257
supreme court rules as to, to apply ... 261

any other person may intervene on filing affidavit ... 267

appeals, papers remitted to Regina local registrar ... 263
proceedings may be stated on ... 263
regulations governing ... 263
stay of proceedings, may be ordered ... 263
time for hearing to be fixed ... 263

appearance ... 259
rules as to supreme court to apply ... 267

application for probate or administration, who may make ... 257

bond to be given in administration ... 257
form of (form 17) ... 261

caveat must be received prior to grant ... 259
removal of ... 258
requirements of ... 258
time in force ... 258
warning, how given ... 259

caveator, address for warning ... 258
to declare nature of interest ... 258

citation of rules ... 268

citations, etc., how directed ... 259
may be published ... 259

claims, verification of ... 260
books to keep ... 262

clerk, caveats to be numbered, etc. ... 263
fees ... 263
file papers ... 268
grant to be recorded ... 262
list of grants, etc., to be sent to registrar ... 263
note of surrogate certificate to be entered ... 262
notice of applications ... 262
number and indorse applications ... 262
office hours ... 261
order to be noted ... 262
papers to be transmitted by post ... 262
probates, etc., to be signed and sealed ... 263

SURROGATE COURT RULES—*Continued.*

clerk, etc.—*Continued.* PAGE
construction 267
contentious business, when so considered 267
appearance, Supreme Court Rules to apply 267
practice and procedure, Supreme Court Rules to apply 267

costs. (*See* tariff of fees)

defence, statement of 267
distribution of estate, when 259-260
estate may be distributed, when 259-260
under $200, one surety only 261

fees, clerk 265
solicitors 266

forms 266, 268-291
affidavit of death and place of abode 275
execution of bond 281
of will by witness 277
plight 289
search for will 276
sureties 281
value of property 277
administration bond 279
affidavit of execution of 281
caveat 289
certificate by registrar, re administration 274
probate or will annexed 273
election by minors of a guardian 288
exemplification of administration 286
probate and administration with will 286
letters of administration 284
with will annexed 283
double probate 285
probate 282
monthly return by clerks 275
notice by clerk to registrar of application in administration 273
probate and with will 272
of caveat being lodged with clerk 290
oath of administrator 279
with will 278
executor 277
petition for administration 271
with will common form no executor 269
where executor or legatee renounces 270
probate in common form 268
renunciation of administration 288
probate or administration with will 287
statements of claim 291-292
defence 292-293
warning to caveator 290

noncontentious business, what to include 257

notices, how directed 259
may be published 259
of renunciation, when subsequent to notice of application 261
that insist as to proof of will in solemn form 267

oath of administration 258

person opposing grant 259
appearance by 259

petition, contents of 257
to be signed 257
to show right of applicant 258

practice and procedure in contentious business similar to supreme court 267
may apply to judge as to 267-268

proceedings in default of defence 267
to be prosecuted with diligence 267

proof of search for will to be shown 257

SURROGATE COURT RULES—*Continued.*

PAGE

registrar applications, caveats, etc., to be numbered, etc. 264
communications by registered mail 264
fees 264-265

removal of causes to supreme court 264
judge to give directions 264

right of applicant to be established 258

search for will, proof of 257

security consisting of negotiable instruments 260
to be valued 260
omission of 260

summons, how directed 259
may be published 259

sureties to justify 261
who may be and who not to be 261

tariff of fees, solicitors 266
surrogate clerks 265-266
surrogate registrar 264-265

taxation 266

time caveat in force 258
for appeal to be completed 263
for hearing of 264
if not fixed appeal dismissed 264
for distribution of estate 259-260
for passing accounts 261
for valuation, notice of 260

verification of claims 260

warning of caveat 259

wills, living persons not to be removed except in person or by order 258

will may be deposited by living person 258
to be numbered, entered, etc. 258
to be marked, how 258

WINDING UP ACT, RULES AND ORDERS UNDER

admission of documents 186
costs of failure to admit 186

advertisements 188
for creditors, contents 180

after declaration of dividend parties claiming must prove claims 182

amount may be reserved to pay claims not sent in 181

application to approve of compromise to be supported by affidavit 185
to be heard in chambers 184
to be made in chambers 177
to wind up time for 179

calls, notice to be by and contents of 182
notice of by advertisement 183
need not contain amount 183
order may be made to pay all amounts due 183
not to contain specific amount 183
may be for contributory to pay 183
to be served on contributories 183

claims not sent in to be mentioned by liquidator 181
amount may be reserved to pay 181

compromise to be sanctioned by judge 185
his sanction to be indorsed 185

contributory and creditors may attend proceedings 187
or representative may be appointed 187
must file address 187
calls on to be on notice 182
may be by advertisement 183
notice need not contain amount 183
order for served 183
to pay 183-184
execution may issue against 184

WINDING UP ACT RULES—*Continued.*

PAGE

contributory and creditors—*Continued.*
list of ... 182
settlement of ... 182
may deposit receipt ... 184
contributory and creditor may inspect documents ... 186
contributory receipt for money paid by ... 184
costs, liquidator may be ordered to pay additional ... 184
costs of increased amount of calls ... 183
proving claims ... 181
after declaration of dividend ... 182
solicitors, counsel, sheriff, etc ... 188
taxation of ... 189
directions may be given by judge in all matters ... 179
documents, contributories and creditors may inspect ... 186
filed in court to be with registrar ... 186
not in court to be with liquidator ... 186
notice to admit may be given ... 186
execution may issue in certain cases ... 184
forms to be used ... 188
heading of petition and affidavits to wind up, etc ... 176
interpretation, registrar is registrar of supreme court, Saskatchewan ... 176
intituling of petition, affidavits, etc ... 176
judge may require proof of claims and debts ... 180
judge to give directions ... 179
liquidator accounts to be filed by ... 179
passed by ... 179
books to be kept by ... 179
death, removal or resignation of ... 179
evidence of qualifications of ... 178
required for judge as to creditors, etc ... 178
if desired to have notice to be given ... 177
judge may appoint forthwith ... 177
may appoint provisional liquidator at any time ... 178
may be ordered to pay additional costs ... 184
notice of application, contents of ... 178
provisional liquidator may be appointed at any time ... 178
satisfy court as to sureties ... 178
surety may be a guarantee company ... 178
to satisfy judge of solvency ... 178-179
to deposit claims ... 180
to investigate claims ... 181
list of contributories, how proved, etc ... 182
to be brought in ... 179
to be settled on appointment ... 182
material contributory or creditor to receive ... 176
demand for to be satisfied ... 176
filed on or before service of notice ... 177
otherwise must have leave to use ... 177
relied on to be mentioned in notice ... 176
notice of amount due under call to be served with order ... 183
notice of application to mention material relied on ... 176
of appointment to wind up to whom given ... 179
of calls what contain ... 182
may be made by advertisement ... 183
to creditor to prove claim ... 181
to parties interested of the hearing ... 181
orders to be signed by chamber clerk and entered ... 185
petition to be indorsed by solicitor or party ... 176-177
practice, general supreme court to govern ... 189
proceedings before a judge ... 184
in chambers on notice ... 184
order to be drawn up ... 185

WINDING UP ACT RULES—*Continued.* PAGE

proof of claims and debts by liquidator 180
judge may require 180
after dividend 182
not required unless notice 180
proof of debts 180
provisional liquidator, application of rules to 187
receipt for money paid by contributory 184
service, address for 177
manner of 176
service of papers 188
mistake in names not to affect 188
time, how reckoned 189
to wind up 179
value of claims to be estimated 181